

1842

A
T R E A T I S E
O F
G A V E L K I N D,
Both NAME and THING.

S H E W I N G
The True Etymologie and Derivation of the One, the
Nature, Antiquity, and Original of the Other.

With sundry emergent OBSERVATIONS, both pleasant and
profitable to be known of *Kentish-men* and others, espe-
cially such as are studious, either of the ancient Custome,
or the Common Law of this Kingdome.

By (a Well-willer to both) *WILLIAM SOMNER.*

The SECOND EDITION corrected from the many Errors of the former Impression.

To which is added,
The LIFE of the AUTHOR,
Written, newly revis'd, and much enlarged by the present
Lord Bishop of *PETERBOROUGH.*

Fœlix qui potuit rerum cognoscere causas.

Virg. 2. Georg.

*Nemo sibi blandiatur de auctoritate veterum, quibus etsi fabulæ displicuerunt,
non tamen habebant unde falsitatem earum coarguere possent. Sed nostrâ ætate
crebrescentibus literarum monumentis, inexcusabilis torpor est in fabulis scien-
tes, prudentesque permanere.* *Cranz. lib. 2. Metrop. 9.*

L O N D O N:

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M, DCC, XXVI.



THE
PREFACE.

Courteous Reader,

I*T is now full eighteen years since, by solemn promise, I became engaged to my Countrey-men, upon their good acceptance of certain of my labours, in behalf of our City, wherewith I then presented them, to proceed to the same, or some other such like undertaking for the County; a thing, which*
as

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*as I then really intended, so have I not since wanted that encouragement for it from the better sort (expressed by their courteous acceptance of those my former labours) which I could expect. But being soon after (proh dolor!) overtaken by that impetuous storm (of civil war) not yet quite blown over, causing the distraction, and threatening the destruction of this once renowned Kingdome, I was necessitated to betake my self to other thoughts, chiefly how I might secure my self against the fury, in warding off the danger, of the present storm; being not able, I confesse, to reach to that high pitch of sedulity and magnanimity, both in this kind to which the Grecian Socrates is said to have attained, whose thoughts were ever running on his book; insomuch, as but the very next night before he was to suffer death, (regardlesse of his so neer approaching danger, able to indispose the mind, discourage the industry, and shake the constancie of any common spirit) he was desirous to learn Musick, because (saith the Story) he would die still learning somewhat. Being therefore thus diverted, and utterly for the time discomposed for the performance of
my*

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my promise, I hope not onely to be excused of my Country-men for (what had not else been hitherto delayed) my County-undertaking, but also to obtain of them yet further respite, in hope of a better opportunity, for the discharge of that debt. For my more easie purchasing whereof at their hands, and that they and others may perceive, that I have not been altogether idle all this while; pitching in my thoughts upon our Kentish Custome of Gavelkynd, and being not unfurnished of matter in the progresse of my studies gleaned and gathered from old Records, enabling me, with the help of that little skill I have attained in the Saxon tongue (to the study whereof I was encouraged by my precious friend and ever-honoured Mecænas, Dr. Casaubon, as is elsewhere by himself truly averred) to some more than vulgar discourse thereof; as a specimen and earnest of my further intentions for the County, I betook my self at spare hours to the perusal, resolving on the publication, of those collected notes and notions, disposing them so, that as they have to satisfaction informed me in the points proposed, so they may be of like use to others,
willing

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willing to bestow their pains, and lay aside all prejudice in the perusal of them.

Kent, I considered, had been far and neer long celebrated for her Gavelkynd, though not so known either at home or abroad, whether in point of etymologie, or properties, (that especially of Partition, rendring it so incomparably famous throughout the Kingdome) as truth would. To wipe off therefore that dust of error, which time especially (that parent of corruption) hath contracted to it, I have in the present discourse laboured chiefly to assert what I conceive to be the true sence and derivation of the term, for the understanding of the ^a name; whence the properties, that especially here instanced, do proceed, for the better judging of the nature of it, according to that end propounded to my self in all my researches, which is to know things, not so much in their present as primitive state, more in their causes than effects: Tunc enim (saith the ^b Philosopher) unumquodque scire arbitramur, cum ejus causas & principia cognoscimus.

^a Nomina si ne-
scis perit & cog-
nitio rerum. Isid.
Orig. l. 1. cap. 7.

^b Arist. 1. Phys.
& 2. Metaphys.

By

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By the proceſſe and proſecution of the argument, having a fair and pertinent inducement, if not to treat, yet at leaſt to touch upon, and take notice, as of the Saxons Bocland and Folcland, ſo of the Feudiſts Feudum and Allodium, (a pair of vocables, the latter, that have long and much perplexed many prime mens fancies to diſquire and find out their true and proper derivations, to the occaſion of great varieties in the point, each man abounding in his own, and that, for the moſt part, a different and ſingular ſence) I thought it not amiſſe to make one in the number of ſuch Etymologiſts, and although with ſingularity, I confeſſe, and diſſent from all the reſt, yet perhaps ſo much to the purpoſe (abſit jactantia dictis!) as, if not to hit the mark, yet at leaſt to come ſo neer it as few before have done. Alike ſingular, as both here, and before in the derivation of Gavelkynd, ſo afterwards I may be found in that of Socage, yet I truſt with ſo much truth, and that ſo fully evidenced, as will ſerve, I hope, to render me with the ſober and ingenuous, worthy, if not of thanks, yet of excuſe and pardon, if they differ in opinion from me.

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Here also (good Reader) be advertised, that whereas, by occasion of our discourse in the third Proposition, concerning the Partition-property in Gavelkynd, I had obiter, or incidently, made some mention of the Writ, De rationabili parte bonorum, sometime (by means of that partition mentioned in the old Kentish Custumal) obtaining, and now again (if the endeavours of some may take effect) reviving in this County; it came afterwards into my mind to think it would not be impertinent to the present Discourse, somewhat further to enlarge in that particular: that by enquiry made into the Antiquity, and tracing the progresse of the Partition intended by this Writ from its first birth until its full growth, we might be the better able to give judgment, and make the more probable conjecture of the present validity or invalidity thereof. My discoveries therefore being made and communicated to some judicious friends, not without their acceptation and my encouragement for publication, I have adventured to add them at the end of that third Proposition, pag. 91.

As

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As for my thwarting the common opinion, concerning our composition with the Norman Conquerour, and the consequents of it, I offer no Apologie here, as having already made it in the proper place, and that, I also trust, so fully, as I may well expect to be excused of it here. In sum, loving truth (the end of all Science) for it self, and altogether unbyassed with any by-respects, whether of vain glory, singularity, or the like, I have made it my constant endeavour in what is here proposed and published, that Truth alone (than which saith the Philosopher, nothing is sweeter, nothing more precious) might triumph over Falshood, Antiquity over Novelty. If hereby I have done either of them any right, or any friends any pleasure, as the chiefest reward I expect for all, I shall desire that such a measure of respect may be vouchsafed, as to those old Records from whence the chief materials in this structure have been taken, so to that ancient learning which hath contributed fitting tools wherewith to work the same materials, and fit them for that use, as may secure and rescue both (uncapable of other recompence)

Idem 2. Metaphys.

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compence) from that scorn, neglect and contempt in the dayes of so much novelty so freely cast upon them, since by falling into some hands, so good an improvement may be made of them for the publike.

I may perchance (at first sight, at least) be thought too bold with the common Lawyers, too busie in their Common-wealth, too much meddling in matters of their peculiar Science; yet no otherwise, I hope, than that they and their friends may be willing to excuse me. I am one that honour their profession, and have here done or said nothing out of opposition; my intent being onely in my way to do them service, and their profession right, by holding forth to publike view some Antiquities tending at once to the satisfaction of the one, and illustration of the other. For which purpose I have by me some other things in a readinesse for the publike, and which shall not (God willing) much longer be retarded, in case these my present endeavours (as my past have done) meet with any proportionable encouragement, and the times permit, by the continuance of our
Counties

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Counties peace, (Peace, I say, that mother of Arts :) which with an enlargement and establishment of that blessing throughout the three Kingdomes, is a chief subject (courteous Reader) in the daily devotions of

Thine humble Servant,

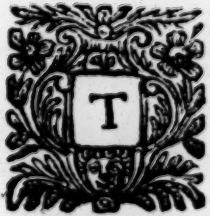
William Somner.



T H E



THE POSTSCRIPT.

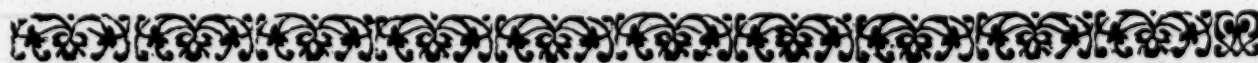
HE Reader is here further to be advertised, that both this Preface and the following Treatise were first written more than twelve years ago, have lain by the Authour ever since, and had not now come forth, but upon the encouragement of some worthy and judicious friends. If therefore any thing (whether for language or otherwise) in either the one or the other, seem improper, uncouth, or unsuitable to the present times, his patience and pardon is humbly craved and expected.



O expedite such (in their perusal of this work) as are ignorant, but studious, of the *Saxon* Language, the Authour (although he have but lately set forth a *Saxon Dictionary*) hath thought it very fit here to prefix the *Saxon* Alphabet and Abbreviations.

a b c d e f g h i k l m n o p q r s t u w x y z.
a b c d e f g h i k l m n o p q r s t u p x y z.

th th that and
þ ð þ ʒ





H. S. E.

WILHELMVS SOMNERVS
Cantuariensis
Saxoniam Literaturam
Civitatis Cantuariæ Historiam
(Tenebris utramq; involutam)
Illustravit

Cantij Antiquitates meditantem
Fatum interceptit,

Officium

Erga { Deum pietate severa
Homines probitate Simplici,
Principem fide periculosa.
Patriam Scriptis immortalibus
Indicavit

Ita Mores Antiquos
Studium Antiquitatis efformat

(Nat. est Martij 30: 1606
Omnem Aetatem egit
Obijt Martij 30: 1669.



THE
L I F E
O F
Mr. S O M N E R.



To the Reverend
Mr. *JAMES BROME.*

S I R,



HAVE receiv'd the Transcript
you sent me of Mr. *Somner's dis-*
course of the Roman Ports and
Forts in Kent: and I agree with
you in the opinion, that the pub-
lication of it would do honour to our Coun-
ty,

ty, and service to the learned world. And since you have obtained leave of that *Venerable Body*, to whom the Original belongs; I am willing to assist in the Edition. You judge right, that the life of the Author is much wanting; and that some notes should be affixt to this Treatise, to explain what otherwise might stop the Reader. From which task I wish you had not excus'd yourself by a retir'd life, and want of access to books, and other notices of this kind. But since you devolve those cares on me, I will take up one half of the burthen; and commit the other to our Friend Mr. *Edmund Gibson* of *Queens College*, a Person well vers't in the subject of Antiquities, and therefore most fit to illustrate a discourse of this nature with such cursory remarks, as may adorn and improve the work. As to the Author's Life, since you have furnisht me with so many faithful materials; I am content to tell the world, how great a Man lyes buried, and how much his memory deserves to be reviv'd.

In doing this, I shall treat him not as a Courtier or a Patron, whose reputation must be

The LIFE of *Mr.* SOMNER.

3

be rais'd by lines of flattery, and artificial disguise; but as an Historian and Antiquary, who is best represented in the same truth and plainness, with which he liv'd and wrote. There is this religion due to the ashes of an honest man, to let the Memoirs of him be simple and unaffected, to lay by all unnecessary shades and colours, and only draw him like himself.

William Somner, son of *William Somner* and *Ann* his wife, was born on the 30. day of *March* 1606. within the Parish of *St. Margaret's* in the City of *Canterbury*. A fit birth-place for an Antiquary; *this being one of the most ancient Cities in England*^a. And like a true Patriot, he prov'd his natural affection, and repaid his nativity by giving it a new birth. He restor'd the perisht ruines, and brought back all its pristine glories. *For his thoughts and affections having ever much inclin'd him to the search and study of Antiquities, he did more particularly, as bound in duty and thankfulness, apply himself to the Antiquities of Canterbury. He hoped the bet-*

^a *Pref. Antiq. Canterb.* 4to. 1640.

ter acceptance of the work from the Author's thankful intentions towards the place of his birth; judging this a sufficient motive why he should of all other places desire to know the Antiquities and former state thereof^b.

He was so well pleas'd with his lot of breathing first in this fair ground, that neither mind nor body could be mov'd to any distance from it: he took pleasure to call it *the place of his Birth, Education, and abode^c*. Like the good old Citizen of *Verona*, within the walls, or in sight of them, he liv'd, grew up, and died.

Fashions he despised abroad, and learning he would have at home. So that here in studious content, he took up his cradle, his mansion, and his grave.

He was descended of an honest and sufficient family^d. His father was Registry of the Court of *Canterbury* under Sir *Nathanael Brent* Commissary. This name had been eminent in other ages, and in other Counties. *John Somenour* of *Multon* near *Croyland* was a Commoner of some figure in the reign of

^b *Pref. Antiq. Canterb. 4to. 1640.*
de Ling. Saxon. p. 141.

^c *Ibid.*

^d *Casaub.*

Henry the fifth^c. There was a publick Hall or Inn within this University, that was called from the first owner of it, *Hospitium Somneri*, or *Somenorshyn*^f. And there is now a gentile branch of this ancient name in the County of *Bucks*. [And of late there was a Family of the *Somners*, or *Sumners*, (probably owing to the Ecclesiastical Office of *Summonitores*, *Summoners*, or *Apparitors*) of long standing in the Parish of *Paston* near *Peterborough*.] But let me observe this for the honour of our modest Author; that tho' the knowledge of Pedigrees was one of his proper talents, yet in all his works he gives no one hint of his own Parentage or name.

When his forward years made him capable of literature, he was committed to the Free School of that City, then govern'd by Mr. *Ludd*, which he after gratefully remembers as *the place of his Education*^g. What his improvements here were, I know none living who can attest, and it shall not be my vanity to conjecture. Tho' perhaps he here imbib'd the inclinations to Antiquity from

^c *Hist. Croyland. contin. p. 502.*
p. 158. b.

^g *Antiq. Canterb. Pref.*

^f *Hist. & Antiq. Oxon.*

the fresh memory of the late Master *John Twine* LL. B. who dying 1581. had been very inquisitive into former ages, had left a public monument of such knowledge^h, and had made particular *collections of the Antiquities of this City*ⁱ: whose fame in this part of learning might well incite an emulous youth, and raise that spirit, which carried him at last beyond this great example. However, here was our Author initiated in the elements of *Rome and Greece*, among many rival wits, of whom let me mention only *Peter Gunning* son of a Clergyman born at *How* in Kent, *An.* 1613. and bred at this School to the age of fifteen, when being remarkably ripe for the University, he was sent to *Clare-Hall in Cambridge*^k, and left his school-fellow behind. Their acquaintance here contracted, settled after into a sacred friendship, and there hapned good opportunities to confirm it, by Mr. *Gunning's* frequent visits to this City, and by his Preferment to a Prebend in this Church, *An.* 1660. But let the School be proud of this honour,

^h *De rebus Albionis, &c. Lond.* 1590. 8vo.
Cant. Pref.

ⁱ *Somner Antiq.*
^k *Wood Athen. Oxon.* Tom. 2. pag. 577.

that

that at the same time it instructed two of the greatest Men of their age and nation, one of the best of Divines, and one of the best of Antiquaries.

When our young Scholar had made such progress in years, and in his studies, as qualified him for admission to either of the two greater Schools of Learning; then, either by the persuasion of his friends, who in tenderness would keep him near themselves, or by his own inclination to deal with ancient Records, he was plac't as Clerk to his Father in the Ecclesiastical Courts of that Diocese. And when the usual time of *apprehending* was expir'd, he was soon preferr'd to a creditable office in those Courts by that true Judge of men, Arch-bishop *Laud*, to whom he after dedicated his first labours for the public, and gratefully declares, that *the chief inducement whereby he was animated to appear in that kind, was his Grace's interest in the Author, as subsisting in his place and profession, under God, chiefly by his Grace's favour and goodness*¹. What made that great

¹ *Antiq. Cant. Ep. Ded.*

Patron of letters to prefer him, was no doubt a sense of his happy Genius, comprehensive of past ages. For that wise disposer of stations in the Church, made it his care and his glory to select such persons, whose abilities might best suit their respective employs. And being therefore to entrust the many antient Records of his *Metropolitan Church*, [with safe and clean hands,] he would provide a Man of that spirit, who should with integrity preserve them, and with industry apply them to the service of the Public; as seems modestly acknowledged by our Author, when he commemorates *his Grace's extraordinary care and cost for the collection of Antiquities of all sorts from all parts, crowned by singular piety and nobleness in disposing them to the good and service of the Publick^m*. Believe me (friend) however some narrow envious souls would detract from the merits of this glorious Prelate, and represent him so, as if even his memory were to be martyr'd: yet no one Governour of the Church ever did greater things, or promoted greater men.

^m *Antiq. Cant. Ep. Ded.*

Where shall we find that spirit to serve the Public? where that noble zeal for Books and Scholars? Forgive me these expressions: We of this place had in him the most effectual Patron of our studies. He endow'd us with many admirable Manuscripts, and encourag'd those that would search them. Not that we now want an accession of such treasure to our *Bodley* Archives. You will be pleas'd, I know, to hear that in one year elaps'd, we have expended *sixteen hundred pounds* in the truest riches of the East, in the purchase of such *Manuscripts* as had been imported from those parts by two learned and judicious Men. Yet of these, the greatest part were in effect owing to the same Prelate; who supported the travels of Dr. *Pocock*, and enabled him to make that *Return* we now enjoy.

But I hast to Mr. *Somner*, who prosecuted the duties of his office with prudence and integrity. *An office* (as he calls it) *laudable, and enough honourable*ⁿ. And when he had *any hours* reliev'd from the business of his calling^o, those he devoted to his be-

ⁿ *Pref. Dict. Saxon.*

^o *Ibid.*

loved search into the mysteries of time: to which by the nature of his profession, he seemed the more determined; he himself observing, *that to the studie of Antiquities his particular calling did in some manner lead him*^p. He lov'd much, and much frequented the *Cathedral* service; where after his devotions were paid, he had a new zeal for the honour of the *House*, walking often in the *Nave*, and in the more recluse parts, not in that idle and inadvertent posture, nor with that common and trivial discourse, with which those *open Temples* are vulgarly profan'd: but with a curious and observant eye, to distinguish the age of the buildings, to sift the ashes of the dead; and, in a word, to eternize the memory of things and Men. His visits within the City were to find out the Ancestors, rather than the present inhabitants; and to know the genealogie of houses, and walls, and dust. When he had leisure to refresh himself in the Suburbs and the fields, it was not meerly for digestion, and for air; but to survey the *British bricks*^q, the

^p *Antiq. Cant. Pref.*^q *Antiq. Canter. pag. 6.*

Roman ways^r, the Danish hills and works^r, the Saxon Monasteries^r and the Norman Churches^v. At the digging up foundations, and other descents into the bowels of the earth, he came often to survey the Workmen; and to purchase from them the treasure of Coins, Medals, and other buried reliques, of which he informs us, that many were found in almost all parts of the City, some of which came to his hands^w. Whenever he relaxt his mind to any other recreation, it was to that of shooting with the long bow, which no doubt he lov'd as much for the antiquity, as for the health and pleasure of that manly sport. He forgets not to give a worthy commendation of it, to confess himself grounded in a good opinion of Archery; and not unwilling to vindicate the undervaluing of it with other Men. He recommends to the Reader a judicious Elogie on this England's antient glory by Mr. John Bingham in his Notes upon Ælian's Tactics, which because the book was dear and scarce, he presents a true copy of that whole passage^x.

^r *Antiq. Canter.* p. 22.
^v *Ib.* pag. 156, &c.
Canterb. pag. 476.

^r *Ib.* pag. 144.
^w *Ib.* pag. 3.

^r *Ib.* pag. 46.
^x *Append. & Antiq.*

This was his diversion : but his more constant delight was in *classic Historians*, in old *Manuscripts*, *Leiger-books*, *Rolls* and *Records*. Which made him so quickly known to be a man of use and service to his Country, that upon the great questions in descent of families, tenure of estates, dedication of Churches, right of tithes, and all the history of use and custom, he was consulted as a *Druid* or a *Bard*. While appeal to his judgment and deference to it satisfied contending parties, and stopt litigious suits. This honour and trouble done to him he modestly owns in the Epilogue to his Countrymen, where he mentions *the recourse which some of them had to him for satisfaction and information, rejoicing to give content to them and others*^{*}. And truly I know no one part of humane learning, that can render any Man a more agreeable Companion, and a more beneficial friend, than this knowledge of places, times, and people. Whoever is thus accomplisht, can never want information to strangers, instruction to neighbours,

^{*} *Append. & Antiq. Canterb. pag. 510.*

and a turn of diversion and profit to all society. If he have prudence and good nature, he may be as Mr. *Somner* was, the Oracle of his Countrey.

But the soul of our Author thought it too narrow a Province to resolve the doubts of private Men, and therefore would satisfy the whole inquisitive world. Hence when he had digested his elaborate collections *made for the honour of that ancient Metropolis, and his good Affection to Antiquities*, he dedicates them in a humble unaffected stile to the *Arch-bishop of Canterbury*, had them licens'd by his Chaplain *Guil. Bray*, Octob. 23. 1639. and the next year publisht under this title. *The Antiquities of Canterbury, or a survey of that ancient City, with the Suburbs and Cathedral, containing principally matters of Antiquity in them all, &c. [Collected chiefly from old Manuscripts, Lieger-Books, and other like Records, for the most part never as yet printed. Wherein (for better satisfaction to the Learned) the Manuscripts and Records of chiefest consequence are faithfully exhibited; all for the honour of that ancient Metropolis, and his good Affection to Antiquities.*

quities. Sought out and published by the Industry and Good-will of WILLIAM SOMNER. Cic. In oratore nescire quid antea quàm natus sis acciderit, est semper esse puerum. London, Printed by J. L. 1640. 4to. p. 516. Imprimatur, Guil. Bray. Ex Ædibus Lambetharis, Octob. 23. 1639.] In his Preface with wit and learning he celebrates the knowledge of ancient things, confesses his own thoughts and affections to lie that way, and owns the encouragement of worthy Friends, of whom he names Dr. Casaubon, one of the Prebendaries of the Church, and Thomas Denne Esq;.

This accurate performance is the more laudable, because he could find no way, but what he made. There had indeed been two discourses of the like nature, *Spot's History of Canterbury*, mention'd by *Bale*, and *Collections of the Antiquities of Canterbury*, by *John Twine*, to which he refers in his *Comment. de rebus Albionis*; but both these were lost to the use of our Author^y, and we do not hear they are yet recovered. So

^y *Pref. to Antiq. Cant.*

as he had no one writer to transcribe or imitate, but all the labour and glory were his own. And indeed this difficult honour is the reward of true Antiquaries; they tread in steps unknown, and bring to light the hidden things of past ages. While most other Authors write over again in new words: and do not discover, but only represent.

In this useful book, he forgets not to justify his own profession. He enquires into the institution of Notaries^z: proves Ecclesiastical Courts to be Courts of Record, &c^a. He often shews his duty and zeal to his Mother, the Church of *England*: defends her discipline, and justifies her constitution in his learned remarks on Church government^b, on Archbishops^c, on privilege of the Clergy^d, on dedication of holy places^e, mischief of Impropropriations^f, and such other subjects, on which, by the best of arguments, reason and authority, he vindicates the establishment which then began to shake. And truly this justice must be done to Antiquities and the Church of *England*. None have been per-

^z *Pref. to Antiq. Cant.* p. 287. ^a *Ib.* p. 288. ^b *Ib.* p. 225.
^c *Ib.* p. 223. ^d *Ib.* p. 250. ^e *Ib.* p. 510. ^f *Ib.* p. 58.

fect Masters of the one, but what have been true Sons and servants to the other. It was eminently so in those great names, *Camden, Spelman, Twisden, Marsham, Dugdale*. And might I mention the living, I know many who by improvement in these studies, have in the same way settled their judgment, and improv'd their zeal. For indeed there is a natural reason for this effect: a good cause must appear best to those who look farthest back upon it. Our Church cannot have more genuine Sons than those, who by research into the primitive state of things, can refute the impudence of those abroad, who pretend to *Antiquity*; and can expose the ignorance of those at home, who affect *Innovation*. These Men can *stand in the ways, and see the old paths*, and are fit guides to those who are *but of yesterday, and know nothing*.

But of one providence which attended this work, I must remind you. It was done in such a juncture as preserv'd the memorial of many Epitaphs, Inscriptions, and proper observations which otherwise had soon been lost to all succeeding ages. For immediately began that Rebellion and Sacrilege, which plundered

dred and defac't most of the Cathedral Churches; and among other sad examples of popular phanatic fury, by the instigation of *Richard Culmer* call'd in contempt *Blew Dick* (the same I think, who procur'd an Order from the House of Lords to Arch-bishop *Laud* in the Tower *Feb. 4. 1642.* to have the Rectory of *Chartham* conferr'd on him, void by the death of Dr. *Isaac Bargrave* Dean of *Canterbury*, to which his Majesty by Letters, recommended that Loyal sufferer Mr. *John Reading*^s) this stately Cathedral was storm'd and pillag'd, the beautified windows were broke, the Tombs of Princes and Prelates were ravag'd, and every graceful ornament despoil'd. So that had not Mr. *Somner* took a faithful transcript before the originals were thus eras'd, all had been lost in ignorance and oblivion. The like providence has often watcht over and preserv'd many monuments of Antiquity, just before the fatal ruine of them. The days of desolation were coming on, when that excellent Antiquary, Mr. *John Leland* obtain'd a commis-

^s *Breviat* of Archbishop *Laud*, p. 27.

sion from *Henry 8. An. Dom. 1533.* to authorise him to have access to all the Libraries of Cathedrals, Abbies, Priories, and all other places wherein Records and ancient writings were repos'd, for collecting and transcribing whatever pertain'd to the history of the Nation^f. By virtue of this power he transmitted the knowledge of many Manuscripts, and other evidences which might have been disperst by the dissolutions which followed in the years 1536, and 1537. Thus the indefatigable Mr. *Roger Dodsworth*, just before the late destructive wars, transcrib'd most of the Charters and other Manuscripts, then lying in *St. Marie's* tower in *York*, which tower was soon after blown up, and all those sacred remains were mingled with the common dust and ashes. Thus again the worthy Mr. *William Dugdale*, (after honour'd and preferr'd for his perfection in these studies) search'd over all the Manuscript Books, original Charters, old Rolls, and other evidences relating to the Cathedral of *St. Paul* in *London*, copied out the monumental Inscriptions,

^a *Wood's Athen. Oxon.* Vol. 1. p. 67.

and procur'd Sculptures of the whole Fabric, and all the parts of it, about the year 1656. when that Mother Church was converted into a stable, and ten years after to a heap of rubbish. So that had not that Antiquary drawn the image, as it were, before the loss of the original, all had been forgot, but what tradition had most imperfectly convey'd to us. [The same Conservator of Remains made a strict Survey of the Cathedral Church of *Peterborough*, and took lively Draughts of the few Monuments and Inscriptions within that noble Fabrick, and lodg'd them in the Hands of the Lord *Hatton*; and they still remain an honour to that ancient Family, preserv'd in the Library at *Kirby* in *Northamptonshire*. And the Reverend Dr. *Rob. Sanderson*, Rector of *Boothby Painell*, seeing the Desolations coming on Cathedral Churches, took, or caused to be taken, a fair Transcript of the Epitaphs and Inscriptions within the Walls of the Cathedral Church of *Lincoln*: to which See he was the more worthily preferr'd for having been the Guardian of the Treasures of it.] Thus are Antiquaries, if not inspir'd, yet guided by the counsel of Providence, to re-

mit to posterity the memorial of things past, before their final period. It was thus our Author recorded that flourishing *beauty of holiness* in that critical season; which had it been omitted, the Church had soon been lost within its own walls.

I cannot forbear to recommend to you that ingenious Poem, which on this occasion was wrote by Mr. *Charles Fotherby*, Grandson of a worthy Dean of that Church. It is inscrib'd

In direptionem Metropolitanae Ecclesiae Christi Cantuariensis, ad fidiſſimum & antiquae probitatis virum, deque Clero Anglicano optimè meritum, Gulielmum Somnerum.

*Heu lapidum veneranda strues! sic corruiſ! Aedes
Sacrilegae has audent sic temerare manus?
Quaeq; fenestrarum fracta est sacra pagina! vultus
Amplius & vitreos nec pia turba stupet.
Ceruleo quoties me pictus daemon amictu
Terruit? Huic rabies Culmeriana favet.*

*Hinc quantum nostro Somnero Ecclesia debet
Hic raptas nulla lege recenset opes.
Hic priscum templi ruituri instaurat honorem,
Integra sunt scriptis & monumenta suis.*

Pro

*Pro veris hic molitur chartacea templa,
Et solidum marmor picta columnia refert.
Vel templum pinxisse pium est. Exempla nepotes
Quæ seri plorent, quæq; imitentur, habent.
Urbs satis antiqua hæc non te, Somnere, filebit,
Ingrata ob librum ni velit esse tuum.
Nomine tu portas urbis signasque plateas,
Per te distinctas novimus ire vias.*

This is but a part; I refer you to the whole Poem, as inserted in the *Monasticon*ⁱ, out of pure respect to Mr. Somner. [It was wrote in the times of Dilapidation and Confusion, when there was no care of the Fabrick, and no Hospitality in the adjoining Houses, and therefore concluding thus:

*Nil nisi munda fames & inhospita lecta supersunt,
Amiffas querimur gens macilenta dapes.
Quam cupimus reducem post tristia tempora clerum!
Qui populum melius pascat utroque modo.]*

There were not wanting other pens to celebrate this first performance of our Author. It has a just character given by a proper judge, the learned Dr. Meric Casaubon, a pious and laborious work, and highly useful, not only to

ⁱ *Monast. Ang.* Tom. 1. inter p. 18. & 19.

those who desir'd to know the state of that once flourishing City, but to all that were curious in the ancient English history^k. The best Topographer since Camden, when he comes to the Roman station at Canterbury, does for its modern splendor and glory, refer us to courteous Mr. Somner's description of it^l, a very rational Gentleman, &c. Mr. Kilburne in his survey of Kent does only briefly touch upon the City of Canterbury, because Mr. William Somner had so elaborately, judiciously and fully wrote of the same, that there was left but little (if any thing observable) which he had not there set down^m. And Mr. Philpot who had reason to envy him, breaks into this acknowledgement: Canterbury hath so exactly in all the parts and limbs of it been describ'd and survey'd by Mr. Somner, that I should exceedingly eclipse the labours of so industrious a Pen, if I should go about to pourtray that in any contracted landskip, which hath been before represented to the publick, pencilled out in so large and exquisite a volumeⁿ.

^k Casaub. de ling. Saxon. p. 141.

^l Burton on Anton. Itin. p. 175, 176. ^m Survey of Kent 4^{to}. p. 300.

ⁿ Villare Cantian. p. 93.

[I find very few Reflexions made to the Diminution of the Credit of this Work; Dr. *Harris* indeed cannot but be offended to find that Mr. *Somner* in his *History of Canterbury* p. 97. 175. grumbling at the Increase and Prosperity of the foreign Exiles, the *Walloon* Protestants. Nor does he think the Intreatment some of their Ministers met with from Archbishop *Laud*, doth add any Lustre to his Character. Whereas, Mr. *Somner* is very modest in saying no more than that the *French* Church there was a Congregation (for the most Part) of distressed Exiles, grown so great, and yet daily multiplying, that the Place in short Time is likely to prove a Hive too little to contain such a Swarm. So great Alteration is there since the Time of the first of the Tribe came hither, the Number of them then consisting but of eighteen Families or thereabouts: This Mr. *Somner* might well say in mitigation of Archbishop *Laud's* Severity against them; and yet the Archbishop's Intention was in most of his Proceedings much better than his Success: He thought that way of foreign Worship gave advantage to our *English* Dissenters; and he believed that the Indulgence
first

first reasonably granted to the primitive Refugees, was less necessary to the following Generations born natural *English* Subjects, &c.]

As this was the most ancient royal *City*, and the first Episcopal *Church* of the Saxon Christians: so had they both, a new precedence in this honour: they were the first whose Antiquities were publish'd to the world. And how few have been since conform'd to their example? *The history of St. Paul's Cathedral in London from its foundation, &c.* is an absolute performanceⁿ. And *the history of the Church of Peterburg* will be its everlasting monument^o. But beside these two, I know of none but mean attempts. *The historical account of the original, increase, and present state of St. Peter's, or the Abby Church of Westminster*, is little more than a bundle of Epitaphs and Inscriptions^p. *The remarkable*

ⁿ *Will. Dugd. history of St. Paul's London*, 1658. fol. [Since improved in a Second Edition corrected and enlarged by the Author's own Hand. To which is prefix'd his life written by himself publish'd by *Edward Maynard*, D. D. Rector of *Boddington* in *Northamptonshire*, London for *Jonah Bowyer*, MDCCXVI. fol.]

^o *History of the Church of Peterb.* by *Symon Gunton*, publish'd by *Symon Patrick* D. D. Lond. 1686. fol. ^p *Monument. Westmon.* by *Henry Keep*, Lond. 1683. 8vo. [There is now publish'd the History and Antiquities of the Abby Church of *St. Peter's Westminster*, containing an account of its ancient and modern Building, &c. by *Mr. John Dart*, in 2 vol. fol. 1723.]

Antiquities of the City of Exeter^a, are a dry collection, full of mistakes. *The history of the Bishops and Bishoprick of Winchester, with a description of that City*^r, I presume to be an imperfect work, and therefore not publisht. *The brief account of the Monuments of the Cathedral of Norwich*^f was wrote for private use, and seems more to fear, than to deserve an Edition^t. *The ancient Rites and Monuments of the Monastical and Cathedral Church of Durham*^u, is an ignorant and pitiful Legend. *The history of St. Cuthbert with the Antiquities of the (same) Church of Durham*, was drawn by a much better hand^x, but the Edition of it that has crept abroad is false and spurious^v. We expect the Author's own exact and neat original to be publisht, with fit notes and illustrations, by an ingenious person of singular industry, and great progress in these studies^z. I hear of some others, who are now designing the Antiquities of *York, Worcester,*

^a By Richard Izaac Esq; Lond. 1681. 8vo.
^r By John Trus-
 sel, MS. Athen. Oxon. Tom. 1. p. 380.

^f By Sir Tho. Brown.

^t Tenison's Preface to Brown's Miscellan.

^u Publisht by

J. Davis of Kidwelly, London 1672. 12^o.

^x By Robert Hegge

Fellow of C. C. C. Oxon.

^v London 1663. 8vo.

^z T. Tanner

of Queen's Coll. Oxon.

and *Carlisle*: all of character and abilities for such performance. How happily would it spread the glory of the *English* Church and Nation, if among Divines addicted to these studies, some one were prefer'd to a dignity in every Collegiate Church, on condition to employ his talent in the History and Antiquities of that Body, of which he was a grateful and an useful Member? [Let me only add, that a printed Copy of Mr. *Somner's* Antiquities of *Canterbury* is now in the hands of the Bishop of *Peterborough*, with some notes upon it chiefly relating to the Archdeacons of *Canterbury*. The same person had an 8vo. MS. of Mr. *Somner's* collections towards this and his other works, which he lent to Dr. *Harris* for his gleanings of the history of *Kent*, and never received it back again; that being often the neglect of Undertakers, to borrow materials without returning of them.]

Thus far Mr. *Somner* had searcht only into the Latin writers, and such National Records, as had been penn'd since the Norman conquest, But there is a sacred ambition in the spirit of Learning, that will not let a man rest without new conquests, and enlarg'd dominions. Especially in Antiquities, every acquist heigh-
tens

rens the desire, and the wishes are those of the Eastern Monarch, to have more than one old world to bring into subjection. This generous emulation invited our Author to proceed, and attain the British and the Saxon tongues. To acquire the first, there were rules of Grammar, explication of words, and other sufficient Memoirs, beside the living Dialect, to guide a man of industry and resolution. But the Saxon language was extinct, and the monuments of it so few and so latent, that it requir'd infinite courage and patience, to attempt and prosecute the knowledge of it. To this trial he was encourag'd by the advice of his constant friend Dr. *Meric Casaubon*, who gives this account of it: *that while he was lamenting the obscure remains of that tongue, it happily fell out, that he grew acquainted with Mr. Somner, born of a creditable family, one of primitive probity and simplicity. Being extremely taken with his sagacious wit, and observing his wonderful industry in searching for the Antiquities of his Country; and much approving his sharp and solid judgment, temper'd with the greatest modesty; he began earnestly to persuade and excite him to the*
E 2 *study*

study of the Saxon tongue, as a labour worthy his patient and ingenious spirit, promising his own assistance if he were able to give any, and to furnish him with any materials, that might aid and promote those studies^a. Mr. Somner, whose humility of mind made him obsequious to the counsel of his friends, and tractable to any motion of doing good, complied with the advice of that Reverend Person, confirm'd by his own judicious thoughts, being sensible of the truth of what Sir Henry Spelman had found by his own experience, that the knowledge of the Saxon language was so far necessary, as without it the Antiquities of England be either not discover'd, or at least imperfectly known^b.

When Mr. Somner began this task, give me leave to represent the difficulties he labour'd under. When the Saxons had made the Britains strangers in their own land, then the language which the Conquerors brought with them, soon grew into Contempt among themselves. Even so early as the year 652. Many out of this Island were sent to the Monasteries

^a *Tractat. de Ling. Saxon. p. 140. Ep. Ded.*

^b *Somneri Diction. Saxon.*

of France for Education, and to bring back the manners and language of those parts^c. In the reign of Edward the Confessor, by the great resort of Normans to his Court, the whole Island began to lose their English rites, and to imitate the manners of the Franks; especially it was esteem'd a piece of breeding for all the lesser sort to speak the Gallic Idiom, and to despise the language and customs of their own Country^d. This inglorious affectation is confess'd by an Historian who liv'd in that age. It lookt like an omen of being to be shortly conquer'd by that nation, of whose tongue and fashions they were so industriously fond. The event was so. Three and twenty years after came in the Norman Lords, who threatened an extirpation to that language of which the Natives began to be ashamed. For these new Masters hated the English, and so much abhorr'd their Idiom, that the Laws were all administred in the French tongue, the very children in Schools were kept from learning to read their Mother language, and were instructed only in the Norman; the English manner

^c *Mon. Angl.* Tom. 1. p. 89. ^d *Histo. Ingulphi* p. 62. sub an. 1043.

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of writing was omitted^c. The ignominious marks of a conquered people. The same Author from his own experience does again lament, that the Saxon hand which had been us'd in all writings grew into disgrace, and the French hand, because it was more legible and more pleasing to the eyes, did every where obtain^f, so as in the very next reign, the Saxon letters were so obsolete and so unknown, that but few of the elder people were able to read them^g. Nay in the year 1095. Wulstan Bishop of Worcester was depos'd, when scarce any other thing was objected against him, but that he was an old English Idiot, who did not understand the French tongue^h. It is true, the next successor Henry the first, gave a Charter to William Archbishop of Canterbury, confirming to him the possessions of his See, in the Saxon language and charactersⁱ. This was but a single instance, and perhaps done to oblige his Queen of the Saxon line, and to ingratiate himself with the English subjects, who might hope by this marriage they had a better title in him. And therefore it is a mistake

^c Ib. p. 71. *sub an.* 1066. ^f Ib. p. 85. ^g Ib. p. 98. *sub an.* 1091.
^h *Mat. Par. sub an.* ⁱ *H. Wharton Auctar. Histor. Dogmat. p. 388.*

in the learned *Mabillon*^k, and some other Authors, who assert the Saxon way of writing was lost from the very time of the *Norman* conquest. It was with the Saxon characters as with signs of the Cross in public Deeds, which were for the most part chang'd into the *Norman* way of seals and subscriptions, yet some Charters were with the old form of Crosses. The Saxon Dialect obtain'd no doubt in Country Vills, with some borrowed variation from the *French*, and some remains of it did intermix with the Court language. But the Barons and Knights who were most of them *Norman*, were so afraid of their children's talking the old *English*, that in the reign of *Henry* the second, *They sent them over into France for education, to wear off the barbarousness of the native tongue*^l. At the beginning of the reign of *Edward* the third, *Robert Holcot* a Dominican, confesses, *there was no institution of children in the old English, but they first learn'd the French, and from the French the Latin tongue, which he observes to have been a practice introduc'd by William the Conqueror, and*

^k *De re diplomat. p. 52.*
in Bib. Bod.

^l *Gervas. Tilbur. de otii Imper. MS.*

to have ever since obtain'd^m. Tho' from the first decline of the Barons, and advance of the Commons who were more of English blood, the Country language grew more in-to request; till at last the Commons in Parliament at Westminster the 36. of Edw. the third, shewed so much of the English spirit, as to represent to the King the great mischiefs which would happen to divers of the Realm, if that the Laws were pleaded, shewed, and judged in the French tongue, which is much unknown in the said Realm, &c. Upon which it was ordain'd and established, that all Pleas, &c. should be pleaded, shewed and defended, answered, debated, and judged in the English tongue, &c.ⁿ. Yet this law did by no means restore the Saxon, either in the Alphabet or in the prime Dialect: It only redeemed the kingdom from an old token of subjection, and did honour to the then compound language, much vitiated by imported words and phrases. And still there seem'd a dash of the Norman spirit, which

^m *Rob. Holcot Lect. 2. super sapient. Edward 3. p. 119.*

ⁿ *Pulton Stat. 36.*

by the same law provided *that all such Pleas should be entred and enroll'd in the Latin.*

If there were any conveyance of the true *Saxon* tongue, it was in the Monasteries, but in those only which were founded before the *Norman Conquest*; for in such, interest did oblige them to understand the language of their original Charters. It was for this reason, that in the Abby of *Croyland*, a Tutor was appointed to teach *Saxon* to some of the younger brethren, that in their old age they might be more fit to alledge the Records of their Monastery against their adversaries°. And it was no doubt for the like reason, that in the Abby of *Tavistock*, which had a *Saxon* Founder about 691. there were solemn Lectures in the *Saxon* tongue, even to the time of our Fathers, that the knowledge of that language might not fail, as it has since well nigh done^p.

So that had *Mr. Somner* liv'd before, or in the age of reformation, the way of attainment had been less difficult. Or had he been reserv'd to these lower times, he had met with

° *Ingulphi Histor.* p. 98.

^p *Camden Britan. in Danmon.*

more of help and conduct. For we have since had a good part of the Scriptures more correctly publisht, with excellent notes^a. We have had histories most correct^r. But what above all facilitates the progress and perfection of learners; We have had methodical and accurate *Institutions of Grammar* by the learned Dr. *George Hicks*, incomparably skill'd in the Antiquities of our Church and Nation. [who after a resolute Deprivation was persuaded by the friends of his Person, to carry those studies into a more elaborate work intituled, *Linguarum vett. Septentrionalium Thesaurus Grammatico-Criticus & Archæologicus Auctore Georgio Hiccesio, S.T.P. Oxoniæ e theatro Sheldoniano, An. Dom. MDCCV. Fol.*] So that now to be ignorant of that tongue is not the misfortune of a Scholar, but his fault. Common industry, and an easie application serves.

But Mr. *Somner* had a much harder province: he was in a manner to invent the language, as well as to restore it. For upon his first essays that way, he had but two poor

^a *Evangel. Goth. & Saxon.* 1665.
Gibson, Oxon.

^r *Chron. Saxon. ab Edm.*

Manuscripts, and one of them on so obscure a subject, as might have exercis'd a Critic, sooner than instructed a Novice. But he had an active soul that would feel no impediment. This made him his own guide, to be not only the discoverer of a new world, but the Master of it. His success in these studies he himself congratulated in his own modest way: *When by the advice and persuasion of Dr. Meric Casaubon, I began to apply my mind to the Saxon tongue, in no long space of time I seem'd to reap some tolerable fruits of my endeavours, which did abundantly compensate my labours, &c^r. And that first moving friend does applaud the event of his counsel in these words. To be short, when he had approved my advice, he prosecuted the business with that pertinacious industry, and such equal happiness of wit, that within few years he may be compar'd (to speak modestly) with the most eminent in that knowledge^r. Nor did he only surpass most of his Predecessors, but exceeded some that followed after: and is numbered among the few complete Critics by the*

^r *Diction. Saxon. Præf.*

^r *Casaub. de Ling. Saxon. p. 140.*

best of Judges; who has rightly observ'd, that *since the erection of Monasteries, where Saxon Books lay unknown to those that kept them, unto our own times, only two foreigners, and about twenty Natives, had by their own industry attain'd the faculty of this tongue. Of which small number few arriv'd to an accurate and critical knowledge; Joceline, Somner, Marshall and Junius, publisht all their Saxon purely and correctly: but from almost all others, it came with fault and imperfection; namely, from those greatest men J. Selden, and Sir Henry Spelman, and even from the very Professor, Mr. A. Wheelock^t. I would not cite the approbation of lesser Writers after the testimony of so great a man. I would only add that his very enemies (if he had any) admir'd this accomplishment in him. He who was the only man that oppos'd any thing our Author wrote, does him this justice. His labours, says he, as they are pleasant to such who are delighted in the knowledge and observation of the manners and language of our forefathers; so have they been and ever will be, very profitable to all that are studious*

^t *Hickeſii Gram. Saxon. Pref.*

and inquisitive into Antiquity. For his success in the restoration of that our ancient speech, which had been almost lost, and in a manner so long buried in oblivion, is very eminently known and admir'd, and shall by me be always gratefully acknowledg'd^u.

Mr. Somner by his absolute faculty in the Saxon tongue, was now enabled to make the more intimate search into all remote Antiquities. His next merit was on this occasion: his honour'd friend and Countryman Sir Roger Twisden had publisht the laws of Henry the first, *An. 1644. fol.* to which was prefixt an old Glossary, which Mr. Somner observ'd *to be faulty in very many places*^{*}. On this Edition *he wrote notes and observations large and learn'd, with a very useful Glossary*^y. To which he himself refers in his other Glossary on the ten Historians, on the words *Gravatio, Mancusa, &c.* of which he had treated more largely in his former, not then, nor alas yet publisht. If those papers are in your hands, you have an opportunity to serve and oblige the world.

^u *Silas Taylor history of Gavelkind. Pref. 4^{to}. 1663.* ^{*} *Somneri Glossarium ad X. Script. passim.* ^y *Casaub. de Ling. Sax. p. 141.*

From his time of engaging in the memorials of *Canterbury*, he laid the foundation of a larger design, to collect all the remains of the state of the whole County, for a just and perfect History of the Antiquities of *Kent*. This projected labour he owns to have taken on him, in the kind *Epilogue to his Countrymen*. *If by your good acceptance of these my labours for the City, I may receive encouragement to proceed in my endeavours; it is in my thoughts, by God's assistance, in convenient time, to do somewhat in like kind for you in the Country². And to confirm the truth and honesty of these intentions, An account of what Saints had the dedication of Parochial Churches within that Diocess he leaves with them in pawn, and as a pledge of those his future endeavours, for their farther content hereafter, if God permit.* He omitted no time, and spar'd no pains, to prepare this work without, and to make it fit in the field, that he might afterwards build the house: a house that was not to be built in a day, but the foundations to be dug deep, and the materials to be fetcht

² *Antiq. Canterb. Append. p. 105.*

from afar, with great contrivance, great patience, and great expence. But he made a gradual progress, and in the Preface to his *Tract of Gavelkind*, which he wrote twelve years before the publication; i. e. *An. 1648*. He confesses *it was now full eighteen* (I think it should be *eight*) years, *since by solemn promise he became indebted to his Countrymen, upon their good acceptance of certain of his labours in behalf of their City, to proceed to the same or some other such like undertaking for the County: a thing which as he then really intended, so had he not since wanted that encouragement for it from the better sort, which he could expect. But* (says he) *being soon after (proh dolor!) overtaken by that impetuous storm of civil war, not yet quite blown over; I was necessitated to betake my self to other thoughts.* This was a just excuse, and he had the same reason to beg their longer patience. For he resolv'd the conception should be an Elephant before its birth, therefore he was still encreasing his plentiful store, and still digesting and disposing the order of it. In the mean time *he hop'd not only to be excus'd of his Countrymen for*
(what •

(what had not else been hitherto delay'd) his County-undertaking, but also to obtain of them yet farther respite, in hope of a better opportunity to discharge that debt. In the year 1659. the time of publishing his *Saxon Dictionary*, he again renew'd his promise, that when that work was finisht, he would adorn and complete the *Antiquities of Kent*. [And in that laborious work he often renews the mention of his good design; as in the word *Abbandune idem forsan ac Clovesho olim — De hoc autem amplius imposterum inter Antiquitates Cantianas a nobis (hoc opere tandem absoluto) Deo volente adornandas*. And sub voce *DE N saltus Cantianus ille olim incultus, porcis glande saginandis erat præcipue designatus, de quo nos pluribus imposterum in Antiquitatibus Cantianis*. Again in *Raculf. Regulbium, in agro Cantiano. Reculver, de cujus Etymo posthac si Deo placeat, in Antiquitatibus Cantianis*.] In the following year 1660. he was so taken up with the joys of a returning Church and King; and so particularly involv'd in the cares of retrieving the scatter'd Records, and raising the memoirs of the dead:

^a *Saxon. Diction. sub voce Abbandune.*

above all so immerst in providing that all might justly refund their stolen portion of Church-lands, and in stating the accounts of Fines, Leases, and other emoluments of the Dean and Chapter, who trusted all to his entire integrity and care: that he could not possibly attend to the finishing that long promis'd work. Tho' the generous design was still breathing, and expir'd only with himself.

But let not the world lament its being depriv'd of those labours. For the *Discourse* here given of *the Roman Ports and Forts in Kent*, was no doubt an apartment of that spacious Fabric, and was to have been joyn'd to the rest of that Model. As is evident by this: in his *Saxon Dictionary* on the names of Raculꝝ *Reculver*, Limene muð, mouth of the river or haven of *Limne*, Lunben-pic or *Sandwich*, &c. he promises a better and more large account in his *Kentish Antiquities*; all which are largely discuss'd in this Tract, which must argue it a part of the same work, to which he then refer'd. Besides, among all the intimations of his other performances, he never cites this by the title, under which he

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left it, *Roman Ports*, &c. which proves it was included under the general design of the *Antiquities of Kent*. There be some other loose papers on that subject, which are now, Sir, in your hands, and I know your spirit for the public interest, will embrace any fair opportunity *to do good and to communicate*. I doubt he set his last hand to that part of the argument only which you now publish, which really is a learned and judicious discourse; there runs thro' the whole such a vein of reason, and such a force of authority, as is not easie to find in any Authors, that write for a party, or for any thing but truth. He is singularly happy in fixing *Limene* or the mouth of the river *Limene*, or *Rother*, at *Romney*, since turn'd another way: which is much confirm'd by some old Manuscript Annals that I have lately seen^b. [Tho' probably that was in the later Ages, when the river *Rother* had chang'd its course: for there seems no great question, but that in the earlier times the *Portus Lemanus*, the ancient haven or *Roman Port*, was where the Name and other tokens remain at *Limne*: But the river for-

^b *Annales Saxonum MS. sub an. 892.*

faking that Coast, might find a way to *Romney* as it does now to *Rye*^c: having before left *Hytb* and *Westbyth*. And the place of emptying itself into the Sea might borrow the name of *Port Limen*.] He is more happy in placing the *Lapis Tituli* of *Nennius* not at *Stonar*, but at *Folkstone*, wherein he has the honour to be followed by a most learned Prelate^d. [And tho' the ingenious and learned Mr. Archdeacon *Battely* is of another opinion; yet the Reverend Dr. *Harris* upon comparing all authorities and conjectures falls in with *Stillingfleet* and *Somner*, and believes very truly, that *Folkstone* was the *Lapis Tituli* of *Nennius*, and the place where *Vortimer* had his last battle with the *Saxons*, and where he ordered his monument to be placed after his death, agreeable to that description of *Nennius*, *in campo juxta Lapidem Tituli qui est super ripam Gallici maris*. And tho' Dr. *Harris* differs from Mr. *Somner* in his removing *Port Limene* from the bottom of *Limme-Hill* to *Romney*, yet he pays a great deference to him, and offers an agreement with him in many of his Arguments to that pur-

^c See Dr. Harris *Hist. Kent.* B. 1. P. 11. p. 184. 267.
Stillingfleet Orig. Britan. ch. 5. p. 322.

^d *Stil-*

pose. The judicious Mr. *Somner* in his *Roman Ports and Forts* labours hard to prove that new *Romney* was the ancient *Portus Lemanus*. And indeed it is not unlikely, that the river *Rother*, which anciently ran along under the Hills, and disembogu'd into the Sea, near *Stutfal* Castle under *Limne-Hill*, where was the ancient *Portus Lemanus*, might in course of time, by the terrible alterations which the Sea made in and about that large tract of ground called *Romney Marsh*, came to run out into the Sea first at *Old* and afterwards at *New Romney*. And I agree with *Somner* in believing that here might be then a large and commodious harbour, but this will not make good his Notion, that the *Old Portus Lemanus* was at *New Romney*. I agree with him also, that this river *Rother* was anciently called *Limene*, as it is in the grant of *Ethelbert* Son of *Wightred* King of *Kent* about the year 721. as also in another of King *Eadbright* dated 741. and in the *Saxon Annals* An. 893. And I doubt not but that this is the river which in Archbishop *Plesmund's* Grant, and which is cited by Mr. *Somner*, is called *Rumen Ea*. And he shews
 2 from

from a Charter of King *Osta* about the year 774. that the Sea flow'd in between *Lidd* and *Romney*, with a wide and spacious Opening into the mouth of the *Limene*. And from another Charter of King *Eadbright* to the Church of *Canterbury*, he makes it probable, that the mouth of the river *Limen* or the *Rother* was then near to *New Romney*.] Had he liv'd to supply and methodize the whole, how would he have corrected the remarks of all that went before, and superseded the endeavours of most that could follow after? For I believe it is your opinion, Sir, as well as mine, that what *Lambard* and *Camden* did before, might admit of emendations, and considerable additions. And what Mr. *Kilburn* and Mr. *Philpot* did since, was all modern and superficial. I wonder these two last, who were contemporary with our Author, should seem to have had no recourse to him, nor any knowledge of his more complete design; which could be only owing to their own pride, or want of address to an easie and communicative man. Mr. *Philpot* did engage to write another discourse of the

[^c And Mr. Somner liv'd to supply, &c. as p. 37.]

Ports

The LIFE of Mr. SOMNER.

Ports in Kent, speaking less of the Cinque Ports, because *he intended to publish a particular Treatise relating solely to their immunities, and their just right to take cognisance of the fishery at Yarmouth*^f. This faith the writer might have kept, for he liv'd to the year 1684. but there is no dependance on a man who could afford to rob his own Father of the credit of that book. For the *Villare Cantianum*, or *Kent surveyed and illustrated* republisht, London, 1659. and 1664. fol. under the name of *Thomas Philpot*, is said to have been done by *John Philpot* the Father, born at *Folkstone*, *Somerset* Herald at Arms, who died 1645^g. Let this only be observ'd for the honour of *Kent*, that while other Counties (and but few of them) have met with single pens to give the History and description of them; ours of *Kent* has had no less than four Writers to celebrate the glories of it, *Lambard*, *Somner*, *Kilburn*, *Philpot*. [And since there has been publisht (both from Collections and intimate views) THE HISTORY of KENT in five Parts; containing,

^f *Villare Cantianum*. p. 14. fol. An. 1664.
Vol. 1. p. 102. & Vol. 2. p. 719.

^g *Athen. Oxon.*

I. An exact Topography or Description of the County. II. The civil History of *Kent*. III. The ecclesiastical History of *Kent*. IV. The History of the Royal Navy of *England*. V. The natural History of *Kent*. By JOHN HARRIS D. D. and F. R. S. [Prebendary of *Rocheſter*] *London*, MDCCXIX. fol. of which we have only the first Volume. It had been the greater honour to this capital County if a Native of it, Dr. *Robert Plot* (born at *Borden* near *Sittingburn*, and educated in *Rye* School under my Master *Paris*,) had finiſht his design of writing the natural History of *Kent*, after the manner that he did those of *Oxfordſhire* and *Staffordſhire*. And for this (ſaith Dr. *Harris*) as I am told by some of his family, he had a Patent to be one of the *Kings at Arms*, and another to be *Register of the Heralds Office*; these were great Encouragements, but he died before he made any Progreſs in it. All that I had the favour of obtaining from his Papers of Collections, being only a *Catalogue of some Manuscripts* relating to *Kent*, and a diſcourſe upon the *Roman Ways* in this County^b.] Let me obſerve farther in reſpect and duty to my

^b Dr. Harris *Præf. to Hiſt. of Kent. folio. p. 11.*

native Town, that what Mr. *Somner* asserts of *Dover*, being the place where *Julius Cæsar* intended and attempted to arrive, is from Astronomical computation, fully demonstrated by the very ingenious Mr. *E. Halley*, who proves the year, the day, the time of day, and place, *the Downs*, where he made his first descentⁱ.

Let not posterity censure Mr. *Somner* for this abortive design on the *Antiquities of Kent*, nor impute it to slothfulness, or change of mind, that he did not complete the model he had so long fram'd. It is a common infirmity of those who write nothing, to reflect on the delay of any one expected work. As if it were no more to do, than to talk of being done. Of the fatigues in a great performance, none are sensible but those who are engag'd in them. Thought and reflections, searches and reviews, remarks and collations, method and stile, and ten thousand cares, all multiplied on the men of greater fidelity and caution, retard the Author, and protract his work: especially in matters of Antiquity, to be in haste does make the blinder birth. For those writers cannot at one prospect get

ⁱ *Philosoph. Transact.* for March, &c. 1691.

a view of their design. Like the new improvement of Perspective, the scene opens wider by longer looking on: that is, the business multiplies on the undertaker's hand, and the burden encreases on the weary Bearer. It is this has made more Antiquaries fail of their proposed attempts, than any other sort of writers. Mr. *John Leland* the first restorer of *English* Antiquities after the age of printing, undertook so immense a task, *that the very thoughts of completing, did (as 'tis said) distract him*^k. So as after the publishing some short and trivial essays, he left his four Volumes of collections, *fol.* his five Volumes of *Itinerary*, 4^{to}. and some other monuments of industry in Manuscript, for the most part indigested without leisure, or without patience to complete them. The next Antiquary Mr. *Robert Talbot*, had a great genius and an equal diligence, to gather and preserve the fragments of time: but designing *Annotations on the Itinerary of Antonine*; and *a Collection of ancient Charters*, &c. he died with his thoughts and his papers in confusion. With what tedious application and gradual advances, did

^k *Wood Athen. Oxon.* Vol. 1. p. 67.

the great *Camden* conceive and nourish his fam'd *Britannia*? Had his life and strength endur'd, no doubt he had still been altering and augmenting the glorious work. But he fell, and left unfinish'd this and some other of his own, and the world's disappointed hopes¹, Mr. *Roger Dodsworth* fill'd above sixty Volumes with the most elaborate collections; but was still hunting for more, without the content of disposing what he had. And therefore excepting the Charters inserted in the two Volumes of *Monasticon*, which cost him little other pains than finding, and remitting to the press; he left nothing but infinite materials for those who would apply them better. Sir *Simonds D'Ewes*, a great valuer of History and Coins, had laid a scheme for the *Antiquities and state of Britain*, wherein he pretends he would discover errors in every page of *Camden*^m; but by death he fell from his great and vain attempt. Mr. *T. Allen*, Mr. *B. Twine*, Mr. *W. Fulman*, and many other Antiquaries of this place, had the same ambition to collect, and the same misfortune

¹ *Gul. Camd. Vita à T. Smith. S. T. P. p. 45.*
Archbishop Usher. p. 496.

^m *Epist. of*

never to methodize or publish. But beside these instances of general designs, the particular efforts on a History of single Counties, (like Mr. Somner's on *Kent*) have dropt into the graves of their intended Authors. Mr. *Thomas Risdon* drew up a *Survey or Chorographical Description of Devonshire*; but had not time to make the Edition of itⁿ. Sir *Simonds D'Ewes* attempted the *Topography of Suffolk*^o. Sir *Edward Bishe* promis'd the *Antiquities of the County of Surry*^p. Sir *Matthew Hale* made great collections relating to the County of *Glocester*, but would not frame them into any disposition for the press^q. Captain *Silas Taylor* spent some years in picking up various remarks on the County of *Hereford*, but cast them into no just discourse^r. Mr. *Sampson Erdeswick* wrote a *short view of Staffordshire, containing the Antiquities of the said County*; but could carry it no farther than MS. notes^s. And Mr. *Randal Catheral*, got voluminous collections that respected this County of *Oxford*^t; but never could cast them

ⁿ *Athen. Oxon.* Vol. 1. p. 516. ^o *R. Dodsworth MS.* Vol. 38. fol. 39. ^p *Wood's Athen. Oxon.* Vol. 2. p. 484. ^q *Life of Sir M. Hale* by Dr. Burnet. ^r *Athen. Oxon.* Vol. 2. p. 465. ^s *Ib.* Vol. 1. p. 275. ^t *Ib.* Vol. 1. p. 731.

into a regular History, and took so little care to reposit his MSS. that to all my enquiries, they are now lost. Not to mention the reported designs of later men, Dr. *Nat. Johnston* on the West-riding of *Yorkshire*. *John Aubrey* Esq; on *Wiltshire*. *Walter Chetwind* Esq; on *Staffordshire*; to whose labours, if still depending, I wish resolution and success.

Forgive me this digression, and think it less impertinent; because it serves to justify the memory of our Author, when so many others have fallen short of the like intentions: and the nature of such attempts is more apt to absorb and discourage the aggressors. In the mean time, we should better accept and esteem this remnant that is sav'd of the *Antiquities of Kent*, and hang up the little plank, as more sacred than the whole ship.

But it is a more just Apology for Mr. *Somner*, that he did not devote his whole time to this ineffectual labour; but was all along employ'd in some other duties to the public.

He found it necessary, not only to know the places and persons, but the customs and tenures of his Country; of which none so eminent, and so peculiar, as that of *Gavelkind*.

This

This the Lawyers inform'd him to be the local custom of *Kent*, whereby if the Antecessor died intestate, all the Heirs male did equally share in the inheritance of lands, which had not been held *in capite* nor *disgavell'd* by special *Act of Parliament*. But this account would not satisfy so inquisitive a mind as that of Mr. Somner, for his aim was always to understand properties and nature, more than names: according to that end propounded by himself in all his researches, which was to know things, not so much in their present as primitive state, more in their causes than effects^u. And to this enquiry he was the more induc'd, that he might satisfy his Countrymen, and gain excuse for delay of his County-undertaking. For the more easie purchasing whereof that they and others might perceive he had not been altogether idle, he pitch'd in his thoughts upon the *Kentish* custom of Gavelkind, and to some more than vulgar discourse thereof, as a specimen and earnest of his farther intentions for the County. This discourse he divided into five heads. 1. The true Etymologie and derivation of the name,

^u Treatise of Gavelkind, Pref.

where he refutes the continued fancy of *Lambard, Coke, Camden, Vestegan, Cowel, Spelman, Dodderidge*, and many other Lawyers and Antiquaries, who would derive it from the Saxon *gife-ealcyn give to all kindred, or to all alike*. Whereas he proves the name is by no means borrowed from the partible nature of the land; but from *gafol* or *gavel* *a tribute or customary rent*, and *gecynðe nature, sort or kind*; implying it to be land not held in fee, as *Knights service*; but chargeable with such rents as made it *socage tenure*. 2. He enquires into *the nature of Gavelkind-land in point of partition*, and proves it was neither from the name, nor bare nature of the land; but partly from the nature of the land and partly from a general custom extended thro' the whole County in such censual land. 3. He searches into the Antiquity of *Gavelkind*-custom (in point especially of partition) and why more general in *Kent* than elsewhere. 4. Whether *Gavelkind* be properly a tenure or custom? where he treats with incomparable learning of all feudatory right, and all menial service. 5. Whether before the statute of *Wills* (32, & 34, *Henry 8.*) *Gavelkind*-land in *Kent* were devisable or not? which

which he resolves in the negative, and answers all arguments of those who hold the contrary. All these points are discut with that variety of knowledge, and that ingenuity of spirit, as will make the Author and the book valued, while Learning and Law are valued. At the end is an Appendix of such Muniments, Charters, and other Escripts, as were quoted in the precedent discourse. This subject led him thro' a long course of Common Law, and thro' the sense of very many Statutes: for which he was afraid he *might be thought too bold with the men of that robe, too much meddling with matters of their peculiar science; but hopes they would excuse him, being one that honour'd their profession, and had an intent only in his way to do them service, and their profession right, by holding forth to publick view some Antiquities, tending at once to the satisfaction of the one, and illustration of the other.* What esteem this treatise bears among men of that honourable facultie, I might suggest by this familiar hint. I sought in vain for the book among many Libraries, till it was lent me by a worthy friend eminent in that profession. I hope in a short time a new Edition

Edition may spread it into more hands. But let me give you a farther history of it. When Mr. *Somner* had drawn all his thoughts and authorities into a just discourse, he sent his papers to his judicious friend *Archbishop Usher*, who return'd them with this testimony: *I have perus'd this learned treatise of Gavelkind, and judge it very fit to be published.* Ja. Arma-
chanus. Apr. 7. 1647^x. This approbation of so great and good a man, was the best License that could be askt, or given to the book. But there were two reasons that hindred the publication. First, the distress and persecuti-
on of the writer, which might take from him the appetite and ability of printing. Secondly, the ignorance and affectation of those times, that hated all Antiquity Ecclesiastical and Civil; and doted on a new Gospel, and new Laws: so that till the nation was dispossest of this spirit, it was not fit to cast the pearl before them. The Au-
thor laid it up in his own Archives, and impart-
ed it only to the perusal of some peculiar friends. Dr. *M. Casaubon* had seen and read it, and in the year 1650. told the world, that his friend
had wrote a just treatise in English, upon that

^x Treat. of Gavelkind, Append. p. 216.

most famous and most ancient custom in Kent, call'd Gavelkind, &c.^y The Author himself upon occasion own'd the hidden treasure, and pointed to it once or more in *his notes to the words of Lipsius, An. 1650^z*. and very often in his *Glossary, An. 1652^a*. But when Monarchy, Episcopacy, and Learning were restor'd, then the Author brought forth the things new and old, when the eyes of men were open'd. Yet still his own modesty would have longer conceal'd the talent, if the importunity of friends had not prevail'd. For he confesses *An. 1660. That the Preface and Treatise had been written more than twelve years ago, and had lain by the Author ever since, and they had not now come forth but upon the encouragement of some worthy and judicious friends.* At their request it appear'd abroad with this title. *A treatise of Gavelkind, both name and thing, shewing the true Etymology and derivation of the one, the nature, antiquity, and original of the other; With sundry emergent observations, both pleasant and pro-*

^y Casaub. de Ling. Sax. p. 142.
pend. ad Casaub. de Ling. Sax. p. 16.
vocabulary Feodum, Allodium, &c

^z Notæ ad verb. Lips. Ap-
^a Gloss. ad X. Script. in

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fitable to be known of Kentish men and others, especially such as are studious either of the ancient custom, or the common Law of this kingdom, by a Wellwisher to both, William Somner. London, 1660. 4^{to}.

In this elaborate work, the Author is most happy in the Etymology and description of *Gavelkind*, and *Socage*, the Norman's *Fief de Haubert*, and *Fief de Roturier*; of the Saxon's *Bocland* and *Folcland*; of the Feudists *Allodium* and *Feudum*, &c. wherein he is singular and dissenting from all precedent writers, with such a vein of modesty, and such a strength of reason and authority, as has yet satisfied all Readers, and silenc'd all Critics. He has farther explain'd all the different tenures *In capite*; *Knights-service*; *Fee-farm*; *Frank-almoign*; *Divine-service*; *Escuage certain*; *Burgage*; *Villenage*, &c. with all lands denominated from their service, as *Work-land*; *Boc-land*; *Aver-land*; *Drof-land*; *Swilling-land*; *Mol-land*; *Ber-land*; *Ware-land*; *Terra-susanna*; *For-land*; *Board-land*; *Scrud-land*; *Over-land*; *Monday-land*, &c. Wherein he supplies and corrects *Littleton*, and his oraculous *Commentator*: He fills up the defects of *Spelman*,

man, and prevents the industry of Glossographers, that should follow after. And therefore the diligent *Du-Fresne*, in explication of most of these terms, barely translates the *English* of this book, and faithfully refers to it^b.

By this one performance he has indeed shew'd himself an absolute Civilian, and a complete Common Lawyer; stating all tenures and methods of conveyance with exquisite judgment; and examining the Writ *derationabili parte bonorum*, with that nice hand, as prov'd him Master of more than he profess'd. And in many of these disputes he could have been a more final Arbiter; but that his habitual modesty restrain'd him; So that when many other points of Common Law did offer themselves to his discourse, yet being out of his profession, he would not wade or engage any farther in the argument: lest he should be censur'd of a mind to thrust his sickle into another man's harvest^c.

To obtain this knowledge in the Laws of his Country, he had trac'd all the streams of justice to their fountain head; he had searcht

^b *Du-Fresne Gloss. Lat. in vocibus* Gavelkind, Gavelman, &c.

^c *Treatise of Gavelkind*, p. 170.

back into all the Institutions of the *Norman* and the *Saxon* ages. And having first diligently enquir'd into the Laws of *Henry* the first, and adorn'd them with *Notes*, and a *Glossary*, as was before observ'd; he went back farther, and reviewed all the policy of the *Saxon* Kings: a copy of whose Laws had been first gathered up by Mr. *Laurence Nowell*, (whom Mr. *Camden*^a calls the *Reviver of the Saxon language*) in the year 1567. who going then beyond the seas committed them to his pupil in those studies, Mr. *William Lambard*, desiring him to translate them into Latin, and to make them publick^c. Which was done the following year under the title of *APXAIONOMIA, sive de priscis Anglorum Legibus, &c.* Londini, 1568. 4^{to}. reprinted fol. at *Cambridge*, 1644. [*Laurence Nowell* was a most diligent searcher into venerable Antiquity, a right learned Clerk also in the *Saxon* language, and was one of the first that recalled the study thereof, when he abode in *Lincolns-Inn*, in the Lodgings of one of his brethren, who was a Counsellor of Note there; he was a Tutor in those studies to *Will. Lambard* the

^a *Britan. in Danmoniis.*^c *Lambardi Epistola ad Archæionom.*

Antiquary of *Kent*, who was esteemed the second best in them, and made use of his assistance and Notes when he compiled his book *De pris-
cis Anglorum Legibus*. He, *Laurence Nowell*, hath written *Vocabularium Saxonicum*, or a *Saxon English Dictionary*, written in 1657. 'tis a MS. in 4^{to}. and was sometime in the hands of the Learned *Selden*, but now in *Bodley's* Library. *Franc. Junius*, who maketh honourable mention of the Author, had a Copy of it, and *Will. Somner* the Antiquary of *Canterbury* made use of the Original, when he compiled his *Saxon Dictionary*^f. Upon reciting this account given by Mr. *Wood*, it may not be improper to make a few Additions to it; he conceives him to have been born at *Great Meerley* in *Lancashire*, but at his Ordination he was enter'd as born at *Whalley* in that County *Laurentius Nowell moram trahens apud Sutton Colfield oriundus apud Whalley in com. Lanc. ordinatur Diaconus 9. Nov. 1550. Reg. Ridley Ep. Lond.* Mr. *Wood* tells us that in 1543. he was licensed to proceed in Arts, and about that time being in sacred Orders became Master of the

^f *A Wood Athen. Oxon. Vol. 1. Col. 146.*

Free-School at *Sutton Colfield* in *Warwickshire*, where he continued for some years. But Mr. *Dugdale* had before inform'd us, in his *Warwickshire*, p. 670. "that the Grammar School of *Sutton Colfield* then lately founded by *John Harman* Bishop of *Exeter* was confer'd on *Laurence Nowell*, *Octob.* 1. 38 *H. VIII.* 1547. Soon after his settlement the Corporation took great exceptions against him for neglecting of his School, and exhibited Articles against him in the Chancery. So that accepting of his Arrears, and a gratuity of ten pounds, he resigned in the 1. of *Ed. VI.* So that his stay in this place was not much more than a year." And yet we find upon much better authority he staid longer by some years; and that the exceptions taken against him were rather for his Zeal to the Reformation, than for any neglect of his School; and therefore he appealed to the King in Council, and so well justified his character, as to obtain Letters to the Corporation to give him no further disturbance, 1550. 28. *Febr.* 4 *Ed. VI.* A letter to the Warden and Fellows of the King's town of *Sutton* not to remove *Laurence Nowell* from being Schoolmaster of that place. Council Book of *Ed. VI.* MS. But to return to
2 Mr.

Mr. Somner upon his perusal of Mr. Lambard's work,] he found, *that in the Latin version there was a polite and elaborate stile, too much affected, that gave little or no help to the Reader in understanding the Original Saxons.* Which opinion was after confirm'd by that stupendious Master of the Northern tongues, Fr. Junius, who speaking of Mr. Lambard's publishing the Laws of the English Saxon Kings, translated by himself, tells us that he better approves the ancient version by Jo. Brompton, and advises all that love the genuine Monuments of Antiquity, rather to embrace the old interpretation of a rough and impolite age, than rashly adhere to the modern and more refin'd Translators^h. The same censure was continued by the Annotators on the Life of Alfredⁱ, and by the last Editor of the Saxon Chronicle^k. Upon this principle Mr. Somner did believe, that such an elegant and paraphrastic way of rendring old Records, was too much like paint on the face of a wrinkled matron, or a cap and feather upon gray hairs. He resolv'd to take off the disguise,

^s Somneri Prefat. ad Saxon. Dict. Evang. Goth. ⁱ Ælfredi vita p. 66.

^h Junii Catal. Lib. ad ^k E. Gibson Pref.

and

and represent the true venerable aspect; *by a new version plain and nigh to literal, for the benefit of all who were studious of the Saxon tongue; to which he added some Laws that were omitted in that collection by Mr. Lambard*¹. And designing farther, that such Gentlemen who would read only their mother tongue, might not be ignorant of these fundamental constitutions, he turn'd them all to modern *English*, and has left the Transcript thus entitled, *The ancient Saxon Laws translated into English*. Neither of these versions has yet seen the light, tho' most worthy of it. The first of them especially, will be of great use to the next Editor of the *Saxon Laws*. For Mr. *Lambard's collection* might be now greatly improv'd, as one, who best knows, assures the world, *that beside the Laws first publisht by Lambard, and revis'd by Wheelock, it was probable that many others lie conceal'd in the Bennet and Cottonian Libraries, which it would be good service to send abroad into the world*. And (says the same great man) *I have by me a Transcript of the Laws of King Æthelbert, Hlothare, and Edric,*

¹ *Casaub. de Ling. Saxon. p. 142.*

from

from the *Textus Roffensis*, which Lambard, however diligent in searching out these Laws, had not seen before his Edition of *Archaionomia*^m. Let us not despair of a revisal and augmentation of this Codex of *English* Laws. Our Friend who has done so much honour to the *Saxon Chronicle*, is of abilities, and a genius fit for this other performance.

[A good attempt was since made by the Reverend Mr. *William Elstob* Minister (who had a peculiar help, a learned Sister) but he fell by Death from his undertaking. It was soon after taken up and excellently well perform'd by the Reverend Dr. *David Wilkins*, Chaplain to the great Master and Promoter of Learning Archbishop *WAKE*, and Prebendary of his Grace's Metropol. Ch. of *Canterbury*. *Leges Anglo Saxonicae Ecclesiasticae & Civiles. Accedunt Leges Edvardi Latinae, Guilielmi Conquestoris Gallo-Normannicae & Henrici I. Latinae. Subjungitur Domini HENR. SP E L M A N N I Codex Legum veterum Statutorum Regni Angliae, quæ ab ingressu GULIELMI I. usque ad annum nonum*

^m *Hickeſii Præfat. ad Gram. Saxon.*

HENR. III. edita sunt. Toti Operi præmittitur Dissertatio Epistolaris admodum Reverendi Domini GUILIELMI NICOLSONI Episcopi DERRENSIS de Jure Feudali veterum Saxonicum. Cum Cod. MSS. contulit, Notas, Versionem, & Glossarium adjecit DAVID WILKINS, S.T.P. Canonicus Cantuariensis Reverendissimo in Christo Patri ac Domino Domino GUILIELMO Divina Providentia Archiepiscopo CANTUARIENSI a sacris Domesticis & Biblioth. Londini. Typis Guil. Bowyer impensis Rob. Gosling, MDCCXXI. Fol. A noble Volume of the first Rudiments of our Laws and Government in Church and State, representing the simple Infancy, and the improving Degrees of every Age of them: A Volume not to be wanting in the Library of any Britain Scholar, and more especially to be consulted by every Professor or Student in our Laws; tho' possibly they that practise the more gainful Parts, delight more in the *modern Reports*. This learned Editor Dr. *Wilkins* has done Justice to Mr. *Somner* in several places. In his Preface, *Legum Gallo Normannicarum correctiones haud paucas ex Codice Guil Somneri in Bibliotheca Cantuariensi hausi. Leges Henrici*

Henrici primi ex textu Rossensi & MS. Scaccarii, manu Twisdeniana & Somneriano correcti.—Notas in Leges Henrici primi Domino Rogero Twisdeno & Clar. Guil. Somnero debemus.]

In the mean time, let me observe, that nothing would more facilitate and perfect the studie of our Common Law, than an application to Antiquities of this kind. It is pity the young Gentlemen of that profession should be content to learn only the present practice of the Courts, and look no farther into the original of judicial methods: which alone can admit them to the depth of reason, and the bottom of a cause. There is indeed little hope of this progress in those new measures, of first learning the practick forms in subservience to Attorneys, and bare entring of names for a title to the Bar. But where men of parts are honour'd with the more liberal education of spending some years in one of the two national Schools of Learning, and thence transfer themselves to the Seminaries of the Law, to prosecute the Histories of use and custom: from such we might expect those degrees of knowledge, that would accomplish the Advocate,

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cate, the Judge, and the Statesman; such would be truest Patriots of their Country, and would be the more unwilling to have the Laws of *England* chang'd, when they understood what they were from the beginning. I dare not speak more of my own sense; but I humbly refer to the words of a wise man, who when he has recommended ancient Histories and original Laws, concludes thus. *This I thought good to say for the sake of our young Gentry, who adorn the Inns of Court, that if possible by my advice they would not spare their pains to attain the Saxon tongue, and run over the many monuments of venerable Antiquity in that language and Character, the peculiar treasure of their nation*ⁿ. Possibly Estates and some titles may have been obtain'd by lighter means; but the good name, and the abilities to serve a Kingdom, have been acquir'd only by these industrious studies. This keeps up the memory of *Coke, Dodderidge, Noy, Selden, Hale*, and many other oracles, whom no authority nor time can silence.

But I proceed to tell you the next labour of Mr. Somner: which was a dissertation *de*

ⁿ *Hickeſii Præfat. ad Gram. Saxon.*

Portu Iccio. For examining the expedition of *Cesar* into *Britain*, he found by his own account^o, that his first voyage began from a Port of the *Morini*, from whence was the shortest passage into *Britain*. And where he took ship the second time, (which by description appears to be the same place) he expressly call'd *Portus Iccius*. Men of learning were not agreed in the site of this haven. Mr. *Camden* and *Ortelius* thought it to be *Witsan*. *Raimundus Marian*, and *Adrian Junius*, believ'd it the same with *Calais*. *Jac. Chisletius* for the honour of his Master the King of *Spain*, would have it *Mardike* in *Flanders*. But Mr. *Somner* fixes it at *Gessoriacum*, now *Bologne*; wherein he was followed by *Sanfon*, &c. Of later writers, *Adrian Valesius*^p concludes it to be *Estaples* nigh *Bologne*. The noble *Du-Fresne*^q and *M. Baudrand*^r restore it to *Witsan* or *Witsant*. And Mr. *Halley*^f conjectures it was near *Calais-clifs*, either *Ambleteuse* on the one side, or *Calais* on the other. Other Critics may suspend their judgment, till they see this

^o *Cæs. Comment. l. 4.* ^p *Notitia Galliarum in voc. Iccius Portus.*
^q *Dissertatio 28. in notis ad vitam L. Ludovici.* ^r *Lex. Geog.*
^f *Philosoph. Transact. March 1691.*

The LIFE of Mr. SOMNER.

discourse of Mr. Somner, which deserves to be fairly publisht. The MS. bears this title, *A discourse of Portus Iccius, wherein the late conceits of Chifletius, in his Topographical Discourse, are examined and refuted: the judgment of Cluverius concerning the same Port asserted and embraced, and the true site thereof more clearly demonstrated, by William Somner.* [Soon after translated into *Latine*, and adorn'd with a new Dissertation by the present Lord Bishop of London, then a severe Student at Oxford, there publisht under this title, *JULII CÆSARIS PORTUS ICCIUS Illustratus. Sive 1. GULIELMI SOMNERI ad Chifletii Librum de Portu Iccio Responsio, nunc primum ex MS. edita. 2. CAROLI DU FRESNE Dissertatio de Portu Iccio. Tractatum utrumq; Latine vertit, & nova Dissertatione auxit Edmundus Gibson Art. Bacc. e Coll. Reg. Oxon. — Oxonii, e Theatro Sheldoniano Anno Dom. MDCXCIV. 8vo.* He gives Mr. Somner the deserved title of *immortale Cantuariæ ornamentum — vir doctissimus piissimusq; — auctissimus Somnerus, &c.*]

Our Author's skill in the *Saxon* tongue, oblig'd him to enquire into most of the European

pean languages ancient and modern. For there is a connexion in all learning, especially in the knowledge of tongues, which draws the student from one link to another, till he has past over the whole chain of dependance. This made him run through the *old Gallick, Irish, Scotch, and Danish* dialects; especially the *Gothick, Slavonian and German*. Of his perfection in the latter, he gave the world a public specimen on this occasion. While his Reverend friend Dr. *Meric Casaubon* was employ'd in an essay on the *Saxon* tongue, he hapned upon an Epistle of *Justus Lipsius* to *Henry Scottius*, which contain'd a large catalogue of old *German* words, in use with that nation, about eight or nine hundred years before. The Dr. thought many of them had a great affinity to the *Saxon*; and therefore being then at *London*, sent down the Catalogue to Mr. *Somner* at *Canterbury*, and desir'd his opinion of them. Who within few days return'd his Animadversions, and shew'd the relation of the *German* with the *Saxon* tongue. But because they were too long to be inserted by Dr. *Casaubon*, in the body of his discourse; he plac'd them as an Appendix under

under this title, *Gulielmi Somneri Cantuariensis ad verba vetera Germanica à V. Cl. Justo Lipsio Epist. Cent. III. ad Belgas Epist. XLIV. collecta, Notæ.* This first part of Dr. Casaubon's Comment on four tongues, *Hebrew* and *Saxon*, (the other two *Greek* and *Latin*, the Dr. did not finish) was publisht at *London*, 1650. 8^{vo}. On the mention of it, I will put you in mind of one mistake of a learn'd man, *Du Fresne Ld. du Gange*, who in the preface to his admirable *Latin Glossary*, reflects on those Critics, who would derive the modern languages from *Greek* originals: *Joachimus Perionius* and *Hen. Stephanus* for the *French*; *Monosinius* for the *Italian*; *Matutius* and *Aldretus* for the *Spanish*, and *Stephen Skynner* for the *English*. When this last must be a lapse of memory: for Dr. *Meric Casaubon*, indeed, in this *Comment on the Saxon tongue*, does industriously refer it to the *Greek*, and gives a long Catalogue of *Saxon* words so deduc'd; whereas Dr. *Skynner* does indeed fetch the *Saxon* from the Northern dialects, and reflects on Dr. *Casaubon* for being so fond of that other conceit.

These

These were the publick services done by Mr. Somner, till the year 1650. at which time Dr. Casaubon, reports, *that he would have printed all his useful labours, and would have wrote much more, if that fatal catastrophe had not interpos'd, which brought no less desolation upon letters, than upon the Land^e. And he himself had about three years before declar'd, that he had by him some other things in a readiness for the public, which should not, God willing, be much longer retarded, if the times permitted by the continuance of our Countie's peace, peace that Mother of Arts^u.*

His next opportunity of doing public good was this: It was an observation of the learned, that no one nation had so many various Histories of their own affairs, as that of *England*: wrote by *Britains, Saxons, and Normans*, but most of them in a manner dissolv'd with the Monasteries, wherein they laid and slept. Some of them had been rais'd from the dust by *Joceline, Howard, Parker, Camden, Savile*; but many were yet in chains of

^r *M. Casaub. de Ling. Saxon. p. 141.*
Gavelkind.

^u *Pref. to Treat. of*

darkness; which it would be justice and mercy to redeem, and expose to view. The proposal was made by that industrious Bookseller *Cornelius Bee*, who about 1641. had importun'd Sir *Roger Twisden* to supply him with materials of this kind for the press*. That worthy Baronet call'd in the assistance of *Archbishop Usher* and *John Selden* Esq;†: by whose industry and good affection to learning, ten writers of the *English* history were transcrib'd from the originals in the *Bennet* and *Cottonian* Libraries, and faithfully collated with all different copies, by an expert Amanuensis Mr. *Ralph Jennings*. For the more elegant Edition, a new fund of letters was neatly cast, and a provision made of fine paper. To adorn the work, Sir *Roger Twisden* was to acquaint the Reader with the occasion of the book, and the conveyance of those MSS. from which it was compil'd. Mr. *Selden* was in a larger preface to give account of the ten Historians, and their writings. And Mr. *Jennings* to subjoyn the various lections. But still the Editors were sensible that to complete the glory of the work,

* *Twisdenus Lectori X. Script.* † *Amanuensis Lectori X. Script.*
there

there wanted a *Glossary*, or explication of the more obscure and obsolete words, which often occur'd in those primæve writers. For this province, they knew none so well qualified as Mr. *Somner*: to him they commit the office, and he discharg'd it with infinite integrity and honour. So that when in 1652. this best collection of *Historians* came forth under this title, *Historiæ Anglicanæ scriptores X. &c. ex vetustis Manuscriptis nunc primum in lucem editi, &c.* The Appendix was Mr. *Somner's* labour, thus inscrib'd, *Glossarium, in quo obscuriora quæq; vocabula, quæ toto hoc opere continentur, copiosè explicantur, & ad origines suas pleraq; revocantur, Gulielmo Somnero Cantuariensi Auctore.* Of this performance Sir *Roger Twisden* gives the Reader this character. [*De Glossario verbum, sine quo hoc jejunum & parum utile extitisset opus illud a Gulielmo Somnero pristinæ probitatis & candoris viro, patriarumque Antiquitatum indagatore sagacissimo, &c.*] One word of the *Glossary*, without which this work had been imperfect and little useful. Understand Reader, it was compil'd for your sake by William Somner, a man of primitive probity and candor,

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dor, a most sagacious searcher into the Antiquities of his Country, and most expert in the Saxon tongue. If some words are here glost upon, not found in these writers; know, this was not done out of ostentation, or the affected glory to appear learned; but it was granted at the importunate request of his friends, by a man of the greatest modesty and ingenuity; that if such terms occur in other Historians of our nation, and by none that I know of explain'd; you may from hence discover the sense of them: our design being not to give trouble to him, but satisfaction to you: such are Culvertagium, Witerden, Tenmantale, (the understanding of which I owe purely to him) and others of that kind.

This key to recluse and antiquated words, improv'd whatever of this nature had been done before: it amends and supplies the old Gallic Glossary of Pontanus; the signification of words by Skenæus; the explanation of terms prefixt by Mr. Lambard to his Saxon Laws; the Onomasticon of Clement Reiner, in his Apost. Bened. in Anglia; the Glossography to the works of Chaucer; the Etymologicon of Jo. Ger. Vossius; the Glossary of Dr. Watts, adjoin'd

adjoin'd to his noble Edition of *Mat. Paris*; and above all the excellent Glossary of Sir *Henry Spelman*, then only publish'd to the letter N. Nor has Mr. *Somner* like the former Glossographers, confin'd himself to the meer antiquated names of things; but with happy learning has commented on the Appellations of this Island and several parts of it; to which he has affixt such new and apposite derivations, as delight and satisfie all judicious Readers. It is indeed a work of that extent, as may serve for a *clavis* to all other Historians, and to all Records. Therefore when the learned Sir *John Marsham* wrote an *Introduction* to the *Monasticon Anglicanum*, he refers the Reader to this Glossary of Mr. *Somner's*, where a barbarous word creates him any trouble. And that living Author, (whom I often mention, but cannot enough commend) observes; *That the Laws of the Saxon Kings may be read with some profit, as turn'd into Latin by Jo. Brompton, if the incomparable Glossary of Mr. Somner be consulted, wherein the more obscure words are fully explain'd². And after calls it, a truly golden work, with-*

² *Hickeſii præfat. ad Gram. Saxon.*

out which, as Sir Roger Twisden writes, the ten Historians had been imperfect, and little useful.

How complete might this Glossary be made from our Author's several exercises of this nature, which now remain in the Archives of *Canterbury*? His marginal notes on *Bracton de Legibus Angliæ*; on the collection of *English and Latin Statutes*, printed 1556. 8^{vo}. On Mr. Selden's *Spicilegium ad Eadmerum*; On Verstegan's restitution of decayed intelligence: especially from his *Glossarium rerum & verborum difficilium in Legibus Henrici I.* And his *Adversaria in Spelmanni Glossarium*, in *Watsii Glossarium Mat. Par. additum*: & in *Tractatum Ger. Jo. Vossii de vitio sermonis*. Had the inquisitive *du Fresne* been inform'd of all these papers, how much would he have augmented his immense work? How much will the knowledge of all our Laws and usages improve, when these mighty materials come at last to be digested by an able and patient hand?

The Author himself intended to publish more of this kind. For in his *Addenda ad Gloss. X. Script.* he does advertise the Reader,
 2 that

that if any other difficult words occur, which he had not there explain'd, (as omissions might be easie in so long a work) and read over as it were extempore, he would be glad to be inform'd of them, and would not fail with thanks to explicate them in the best manner that he could: at least in another Tome of Historians, shortly to be publisht. Sir Roger Twisden in his Preface gives the world the same encouragement, to hope for a second Tome, if this first were well accepted. But it was not allow'd to Scholars to be so happy. The association of those Editors was dissolv'd by the death of Selden and Usher within few years. Tho' possibly the greatest impediment was the ignorance and distraction of the times, that could not enough encourage the great expences of the Bookseller Mr. Cornelius Bee, to whom Mr. Somner gives this just character, that he was a man who had deserv'd very well of the republic of letters, by publishing, at his own care and cost, many books of better note, wherein he was so industrious, as literally to answer his own name^a. He had indeed with great charge and pains, collected sufficient co-

^a *Præf. ad Dict. Saxon.*

pies to have made up a second Tome; which lay dead in the hands of his Executors, till for a considerable sum they were purchas'd from them, by that generous promoter of learning, the right Reverend Father in God *John Fell* Bishop of *Oxford*; by whose encouragement some were publisht; and by whose never enough lamented death, others remain in private hands. I have seen the following copies. 1. *Willielmus Malmshuriensis de Antiquitate Glastoniensis Ecclesiæ ejusq; Abbatibus. Ex Libro Roberti Cotton, quem ipsi dono dedit Tho. Allen, Aug. 12. 1672. exam. & collat. cum alio Manuscripto libro, quem Richardus Tychburn Eques & Baronettus dedit Paulo Robinsono, qui eandem inscripsit Bibliothecæ S. Gregorianæ, Duaci, Jul. 15. 1651.* 2. *Inviictissimi Anglorum Franciæq; Regis Henrici quinti, ad ejus filium Christianissimum Regem Henricum sextum, vita per Titum Livium de Frulovisiis Ferrarensem edita. Ex Libro Cottoniano, collat. cum alio Libro Manuscripto in Bibl. Bened. Cantab.* 3. *Historia de tempore primævæ inchoationis sedis Episcopalis Wellensis, & ejusdem Episcopis, & de Episcopis in sede Bathoniensi.*

nienſi. 4. *Fragmentum Annalium Saxonum ab An. 726. ad An. 1055.* 5. *Fragmentum Annalium de rebus ad Hiberniam ſpectantibus ab An. 994. ad An. 1177.* To moſt of theſe copies is a Poſtſcript by the Amanuenſis, Mr. *Ralph Jennings*, wherein he acknowledges the receipt of ſeveral ſums of money, for his reward in tranſcribing and collating the ſaid copies, and promiſes to compare them with the originals, when deſir'd. What honour to the nation had it been, if theſe and many other copies had been publiſht, in the ſame method with the former Volumes? I am ſure, we have ſince had no one Edition of Hiſtorians with that exactneſs, and that grandeur. Nor can we hope for any ſo correct and ſo auſt, till the ſame meaſures be taken, of ſeveral hands joyning in the ſame work. For any one undertaker has either not opportunity to diſcover all copies, or not leiſure to collate them, or not the advantage of attending the preſs for correction; or not patience to draw up (what is the main benefit of a large book) a full and faithful Index. So that we have lame and inaccurate Editions, for want of the wiſdom of our forefathers to aſſiſt one another.

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ther. It is by this mutual help, that the Societies in *France* give us such absolute Impressions. And could we resume that practice here at home, we should infinitely advance the good of letters, and the glory of *Britain*. I detract not from the public services of Mr. *Fulman*, Dr. *Gale*, and Mr. *Wharton*, who seem to have done as much as private men can do.

Mr. *Somner's* reputation was now so well establisht, that no Monuments of Antiquity could be farther publisht, without his advice and helping hand. Therefore when the noble Sir *Henry Spelman* had encourag'd Mr. *Dugdale* to joyn with Mr. *Dodsworth*, to collect and publish the Charters and Monuments of Religious houses, and had communicated to them his own originals and transcripts, of the foundations in *Norfolk* and *Suffolk*: when Mr. *Dugdale* in *Oxford* had got many materials from the *Bodleian* and College Libraries: and in *France* had gathered from the papers of *Du-Chesne*, several memorials of our Priories Alien. When Mr. *Dodsworth* had preserv'd all that related to *Yorkshire*, and most Northern Counties; when they had both searcht the Tower of *London*, the *Cotton* Library, and
 2 other

other Archives; they invited Mr. Somner to assist in that immense labour, who return'd them the Charters of *Christ Church*, and St. *Augustin's* in *Canterbury*, with the ichnography of the Cathedral, the draught of the Monastery and other Sculptures: furnisht them with the original Charter of King *Stephen* to the Abby of *Feversham*, then in his hands; and inform'd them in many other queries relating to the City and County: and then accepted the office impos'd upon him, of bearing a peculiar part of the burden, by translating all the *Saxon* originals, and all the *English* transcripts from the *Itinerary* of *Leland*, and other Records, into plain and proper *Latin*: a necessary and useful ornament to those admirable volumes. Which service Sir *John Marsham* commemorates in his learned *Propyleum*; [*Editori huic interfuit vir eximius Guil. Dugdalius — interfuit etiam vir vestrarum Antiquitatum callentissimus Guilielmus Somnerus, qui Saxonica quæ exhibentur, atque Lelandi Anglia reddidit Latina; ad cujus Glossarium non ita pridem cum Historiæ Anglicanæ Scriptoribus editum amandandus est Lector, si qua vox Latina barbara morem injecerit, qui ad edendam copiosissimam*

*vocabularii Saxonico-Latini congeriem nunc Typos parat.] There assisted in this work a man of the greatest knowledge in our Antiquities, William Somner of Canterbury, who has rendred into Latin all the Saxon, and the English of Leland. To whose Glossary, lately publisht with the English Historians, the Reader is refer'd, if any barbarous word creates him trouble. The same person is now preparing for the press a curious Saxon Dictionary. The first Volume of this *Monasticon* was publisht, London, 1655. The book which now stands in the Library of the Church of Canterbury, has inserted after the *Propylæum* a printed leaf in folio, containing six copies of verses made by *Kentish* men, in commendation of Mr. *Dodsworth*, Mr. *Dugdale*, and Mr. *Somner*, who are there said to be the joint collectors of that glorious work. The second Volume was deferr'd (as a punishment to the ingrateful world) to the year 1661. A third Volume of Cathedral and Collegiate Churches, with Additaments to the two former, was publisht An. 1673. In these books are promiscuously compris'd the most authentic, because most genuine and inartificial, History of *England*. There*

There be materials enough disperst in several hands to complete a fourth Volume. Dr. *Hickes* recites the title of many Charters, in the Archives of the Church of *Worcester*, of which, he says, *none are inserted in the Monasticon*^b. I have seen many originals and Transcripts of omitted Charters and Monastic Annals, in the hands of men of curiosity and public spirit; who would contribute their additions to such a work, whenever men of industry and courage dare to undertake it. [What has been since done by publishing an *English Monasticon* deserves no mention, but to introduce a wish of continuing and enlarging the *Latin Tomes*.]

Mr. *Somner*'s friends knew, how farther to employ a useful man. They observ'd it impossible to cultivate any language, or recommend it to the industry of learners, without the help of some Dictionary for a standing oracle in obscure and dubious words. This was yet wanting to the *Saxon* language, and was the reason why so few were masters of it. For men care not to travel without a guide in lands unknown. This was a burden that want-

^b *Append. ad Sax. Gram. p. 171.*

ed heart and shoulders equal to it; but they could impose it on none more able than Mr. Somner: on him they lay the mighty task, and adjure him to perform it. Above all, the Counsellor of his studies Dr. M. Casaubon, us'd all his interest of friendship to press him to this labour; as he thus informs us: *When Mr. Somner by several essays on the Saxon tongue, had sufficiently prov'd himself a master of it; I ceas'd not then to importune him, that he would think of compiling a Saxon Dictionary; by which work I did assure him, he would best merit of that language, and would receive infinite thanks from all that were studious of it. But in such unhappy times, what can the Reader promise to himself, or what can I promise for the Author? I leave all to his own discretion.* Upon this hint given to the public, many other of Mr. Somner's friends who knew his course of studies, did themselves hope, and made others expect, to see such a labour done by him. Especially when by his *Glossary and Version of Saxon Charters*, he had farther serv'd the world: from that time he was in-

^c M. Casaub. de Ling. Sax. p. 142.

*cited by the daily request and importunity of many persons, to undertake and finish that work; many of his judicious and affectionate friends, considering his slender fortune, and offering to contribute in the charges of the impression: with assurance that the book would be very acceptable both at home and abroad, especially to all that were studious of the Teutonic Antiquities, which language was originally the same with the Saxon^d. But for a work that requir'd so much time, and so great expence, his friends were to contrive some more competent support and reward: to which Providence (that seldom fails industrious men) ordain'd an opportunity. The great Sir *Henry Spelman*, while he was at *Cambridge* with Mr. *Jeremy Stephens*, to search those Libraries, and collect materials for his designed Volumes of *British Councils*, finding very many *Saxon* Manuscripts, and very few that understood them; resolv'd to found a Lecture in that language, to restore and improve the study of it. This generous act was soon done by him, and he first conferr'd that office on Mr. *Abraham Wheelock*, one that had assisted him in some*

^d *Præf. ad Lector. Sax. Dict.*

Transcripts of that tongue; and for endowment settled on him and his successors a sufficient yearly stipend, with presentation to the benefice of *Middleton*, nigh *Lin-Regis* in *Norfolk*. By the death of Mr. *Wheelock* An. 1657. the disposal of that Lecture fell to *Roger Spelman* Esq; son of Sir *John*, son of the founder, who design'd to bestow it on Mr. *Samuel Foster*, a learned and worthy Divine. But Archbishop *Usher*, a friend to Antiquities and Mr. *Somner*, recommended him to the Patron, *that he would confer on him the pecuniary stipend, to enable him to prosecute a Saxon Dictionary, which would more improve that tongue than bare Academic Lectures*^f. And herein that Prelate was like himself, judicious. For the endowment of public Lectures has often met with this ill success, to make the Readers neglect, and the hearers despise them. Whereas if the same rewards were given, on condition of printing those Lectures, or publishing some other remains of that Art or Science; mens industry would be greater, and the Republic of Letters

^e Abr. *Wheelock* præf. ad *Lector. edit Bedæ.*
Ded. ad *Saxon. Diction.*

^f *Somneri Epist.*

much better serv'd. This seems the intention of the wise and pious founder Sir *Henry Spelman*, in establishing this Lecture. The words of his foundation being *to promote the Saxon tongue, either by reading it publickly, or by the edition of Saxon Manuscripts, and other books*^s. Which last design Mr. *Wheelock* had most answered, by publishing *the Ecclesiastical History of Bede*, with the *Saxon Paraphrase of King Alfred*; *The Saxon Chronology* with his own Latin version, and Mr. *Lambard's Saxon Laws*, with some additions, *Cambridge 1644. fol.*

This reason of the thing, and this Will of his Grandfather, inclin'd Mr. *Spelman* to comply with the advice of Bishop *Usher*, and to present Mr. *Somner* to the annual salary of that Lecture. Which this man of tenderness and modesty would not accept, without the free consent of Mr. *Foster*, before nominated to the place: who prefer'd the public before his own interest, and Mr. *Somner* before himself. Therefore content with the Ecclesiastica^l benefice, he left the annual portion of money to

^s *Wheeloci Præfat. Edit. Bedæ.*

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Mr. *Somner*, who receiving this reward, would not omit the duty for it.

He was enough sensible, that to make a *Lexicon* in any tongue, was one of the hardest and most servile labours. Especially if no foundations were before laid; there to find materials, and to build the whole structure, was more tedious and expensive, than barely to augment, or adorn. On reflection he found those difficulties to press upon him: some faint endeavours, and forgotten promises, but no one public performance of this nature.

The first example was given by *Ælfric* the Grammarian and Archbishop, either of *Canterbury*^h, or rather of *York*ⁱ, who flourisht about the year 1004. and made two distinct *Glossaries* on this tongue; one of which *F. Junius* transcrib'd from a very ancient copy in the Library of *Peter Paul Rubenius* of *Brussels*, and communicated to Mr. *Somner*^k, who publisht it with the *Latin Grammar in Saxon*, by the same Author. This could be no great assistance to Mr. *Somner*, because short and imperfect, and indeed *erroneous*,

^h *Cave Histor. Literar. p. 588.*
bus Ælfricis.

ⁱ *Whartoni dissertatio de duobus Ælfricis.* ^k *Præf. ad Sax. Dict. Sect. 17.*

and

and *a little barbarous*, as the *Editor* himself complains¹: and another expert in these studies does affirm, *when Ælfric expounds the words in Latin, he is very oft mistaken*^m. There is another *Glossary Latin-Saxon*, by the same Prelate, (distinct from the former) which he wrote as a Comment on his Grammar; and is found at the end of those copies of the Grammar which are now in the *Cotton Library*, and in that of *St. John's Oxon*: which seems to have escap'd the knowledge of Mr. Somner. This latter may be the same with that *Diction. Latin-Saxon*, which Dr. Cave recounts among the Manuscripts of Ælfricⁿ. And therefore a worthy Author is injurious to Dr. Cave, in taxing him with an error, for *reciting this work among the Manuscripts of Ælfric, when it was publisht by Mr. Somner*^o. No, that work is still in MS. and what was publisht by Mr. Somner is a different Tract, which the Dr. had before mention'd, as printed at *Oxon, 1659*. One writer should be tender of another writer's reputation, and not impute mistakes, but where he is very certain of them.

¹ Ibid. ^m Skynner *Etymol. in voce* Bleak. ⁿ *Histor. Literar.* p. 588, 590. ^o *Auctor. Hist Dogmat.* J. Usher, p. 377.

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There were two other ancient *Saxon* Glossaries by unknown hands, in the *Cotton Library*, the one a thin *folio*, the other a more thick *octavo*; what help Mr. *Somner* had from these, he freely owns, by referring to them. Since the Reformation, Mr. *Laurence Nowell* spent time in drawing up a *Saxon Vocabulary*, which he design'd to complete, and publish. But he dying in 1576. left the imperfect Manuscript, which Mr. *Selden* procur'd, and lent to Mr. *Somner*; who seems not to have receiv'd it, till he had in great part digested his own collections; and implies it to be a deficient work. *F. Junius* after took a transcript of it, the original and copy are both with us. Next to him, Mr. *J. Joceline* Secretary to Archbishop *Parker*, by advice of that learned Prelate, made some larger collections to the same intent, which were transcrib'd by Sir *Symonds D'Ewes* Baronet, and remitted to Mr. *Somner*: who farther mentions a report that *John de Laet* of *Antwerp*, a man learned in *Saxon* letters, had projected a work of this nature; but no performance. After all, Mr. *Abraham Wheelock*, *Spelman-Professor*, did promise the world that he would compile a
Saxon

Saxon Dictionary; but he either forgot the promise, or death absolv'd him from it. It has been the infirmity of great men, when their first thoughts have laid the scheme of any work, to take occasion of proclaiming their design; to raise and deceive the expectation of the world. Prudence should temper this vain desire of glory. An imprinted promise is a very sacred thing: and men should not engage their faith to the publick, unless they are sure to discharge it. How often are men weary of a warm resolution? How oft do second thoughts correct the former: and when the scene is open'd, it is soon changed again? How oft do mens labours encrease upon their hands, till the undertaking prove above their strength? How many accidents of business, sickness, and mortality may intervene? So as what wise man would enter into obligation, when it is such a hazard whether he shall be able to pay?

But this mention of the few *Saxon* Glossographers, is only to do justice to the memory of Mr. *Somner*, by inferring what small assistance he had in so large a work. He had not that easy task of adding to things invented,

or improving an old book; but was to compose all, and be properly an Author. We have been taught at School to honour the *Lexicon* of *J. Scapula*, and yet *Vogler* has call'd him *the Epitomator of Henry Stephens*^p: and another eminent writer says, *he cannot be absolv'd from the crime of Plagiarism and concealment*^q. We admire the laborious Volumes of *J. J. Hoffman*: and yet it is observ'd with great indignation, *that he has arrogated to himself the interpolated and depraved works of other men, suppressing the names of the true Authors*^r. And a great Critic animadverts on him, for transposing the whole *Lexicon* of *Baudrand* into the first Tome of his work^s. Nay *Baudrand* himself is by *Sanfon* accus'd of *theft from his own Father*, without any dutiful mention of him^t. Nothing has been more familiar, than to hear *Holyoak* borrowed most from *Rider*, and he from *Elliot*, and so on. But I will give you one instance, which I have more lately observ'd. *Tho. Cooper's Thesaurus Linguae Romanae, &c.* first publisht

^p *Vogleri Introduct. Univers. p. 68.*^q *Morhofii Polyhist. p. 83.*^r *Baudrand præf. ad Geog. An. 1682.*^s *Jo. Alb. Fabri decas**decadum, num. 78.*^t *Gul. Samfonius Disquis. Geog. Epist. Ded. & Præf. 1683.*

London, 1565. greatly rais'd the reputation of that writer, and is said to have prefer'd him to his great station in the Church. Yet this mighty work is very little more, than a pure Transcript of the *Dictionary Latino Gallicum*, by *Charles Stephens* at *Paris*, 1553. I have collated them in most parts, and find them literally the same in almost all words, and the direct order of them, and in every classic phrase; with this only difference, that those phrases are rendred in *French* by *Stephens*, and in *English* by *Cooper*: whose disingenuity is much the greater, because in his Preface and Dedication, he mentions the *Bibliotheca* of Sir *Tho. Elliot*, and the *Thesaurus* of *Rob. Stephens*; but speaks not a word of this other *Dictionary* of *Charles Stephens*, which was the copy (I assure you) that he transcrib'd *verbatim*.

When Mr. *Somner* had made an immense collection of materials, in order to compile his Dictionary, and had methodiz'd them in two large volumes, now remaining in the *Canterbury Archives*; he sent up his papers to *Oxford*, and the Impression was here made for the Author, *Apr.* 1659. with an elegant inscription to all Students
in

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in the *Saxon* tongue; a grateful Dedication to his Patron *Roger Spelman* Esq; and a proper useful Preface. The Author and his work recommended by the ingenious verses *English* and *Latin*, of *John de Bosco*; *Henry Hugford*; *Joshua Childrey*; and *Will. Jacob* Physician; with an Appendix of the *Grammar* and *Glossary* of *Ælfric*. And at the end of all is a *Catalogue* of those worthy persons who contributed to the great charge of the *Impression*, whose names and example he commends to the present age, and to posterity; for the perpetual honour of *Philologists*, and as a testimony of the Author's grateful mind.

Let none be offended, that so excellent a work was forc'd to be thrown upon the publick stock, and brought up on common charity. Till the men of curiosity encrease their number, this must be the fate of the best books, that they shall not bear the charges of their own *Impression*. It is this has stifled the conception of many glorious designs, to see exquisite Volumes thrown back upon an Author's empty hands; while Plays and Pamphlets reward the trifling writers. What else was the reason that most of our old *Historians* were first
printed

printed beyond the seas; but only, that cheaper methods, and quicker sale, made the Editors to gain abroad, what they must have lost at home? What induc'd Sir *Walter Raleigh* to burn the second part of his admirable *History*, but only a sordid complaint, that the first five books were a burden to the printer^u? What inclin'd Sir *Henry Spelman* so long to suppress the second part of his incomparable *Glossary*, but this only; that when he offer'd the copy of the first part to *Bill* the King's Printer, for five pounds in books, that light proposal was rejected, and he was forc'd to make the Impression at his own great charge^x? How could Dr. *Brian Walton* have carried on those six stupendious volumes of the *Biblia Polyglotta*, An. 1657. if there had not been a public fund, and Treasurer appointed to collect and dispose the contributions of worthy men^y? In a word, it was a credit to this work of Mr. *Somner's*, that it appear'd so little the interest of the writer, and deserv'd so much the charity of public benefactors. Especially at a time, when the op-

^u Life of the Author, *Præf. Gen. Hist.* of the world. ^x *Editoris Præf. ad Glossarium.* 1687. ^y *Wood. Athen. Oxon.* vol. 2. *Fasti.*

pressed Royalists were more tempted to write for bread, than for glory; and were driven upon a double necessity, to beg for the support of themselves, and the Edition of their books.

For this indeed is a farther honour to the work, and the Author of it; that it was done in the days of Anarchy and Confusion, of Ignorance and Tyranny; when all the Professors of true Religion and good Literature were silenced and oppressed. And yet Providence so ordered, that the loyal suffering party did all that was then done, for the improvement of letters, and the honour of the nation. Those that intruded into the places of power and profit, did nothing but defile the press with lying news, and Fast-Sermons; while the poor ejected Church-men did works, of which the world was not worthy. I appeal to the *Monasticon*, the *Decem Scriptores*, the *Polyglot Bible*, [the *London Criticks*, the *Council of Florence*,] and the *Saxon Dictionary*.

I need not tell of the good reception this labour met with among men of judgment; nor how the great progress in the knowledge of this tongue was owing most to this one work.

I would

I would only remind you, that our eminent Linguist Dr. *Tho Marshall*, in the Preface to his *Saxon Gospels*, refers the Reader *upon all doubtful words, to this complete Dictionary, which Mr. Somner compos'd with great diligence.* And our first excellent Grammmarian does gratefully acknowledge, *that he collected many critical observations, which lay disperst in this work².*

It is true, this first public essay on the construction of the *Saxon* tongue, was not so full and absolute, but that it is now capable of additions, and great improvement. For how indeed can any works, but those of creation, be perfect, when they are first produc'd? Especially in a performance of this nature, that depends on the variety of words, and Author's various acceptation of them: here the prime birth can give no more than infancy: it is age and education must encrease the stature, and mature the strength. Besides, our Author had this peculiar disadvantage, that while the abundant sense of words can be gathered only from a multitude of writers in all different times, and all different professions;

² *Hickeſii Pref. ad Gram. Sax.*

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he could procure but few books, and those of a short and ignorant age. This Apology I can better represent in the words of an ingenious Etymologist. *How small a portion of our ancient tongue, like a few planks from a fatal shipwrack, has come into our hands? What a slender stock of words can be drawn out of three or four small Tracts? If of Roman Authors, none had been left to us but the Offices of Tully, and the Histories of Salust and Tacitus. If of the Grecian, none but Herodotus, Thucydides, and Zenophon, how could Calepine and Stephanus have swell'd their volumes to so great a bulk? If you compare our Somner to those giant Authors, tho' in diligence not inferiour to either of them, you would see there a Hercules and a Cyclops; here a Hylas and a Pigmy^a. Tho' certainly, if we look back on the first attempts of this kind, in all the ancient and modern tongues, we shall find no one *Nomenclature*, in its pure beginning so copious, and so exact, as this of Mr. Somner.*

He himself was most conscious, what was wanting to it, and therefore was alway im-

^a *Skinneri Etymol. præf. ad Lectorem.*

proving.

proving the stock, and soliciting all Scholars, whom he thought could be beneficial to him. Among others, Mr. *George Davenport*, a great proficient in that language, sent him many Notes and Observations. I have now before me an original letter of Mr. *Somner* to Dr. *Casaubon*, *Canterbury*, 12. Octob. 1664. which runs thus.

I return you many thanks for those papers of Mr. Davenport, which you were pleas'd to impart unto me. I have more than once perused them, and am so well pleas'd with them, and instructed by them, that I shall improve them to a good degree; in point of correction to some, enlargement and illustration in other parts of my Lexicon; not without the ingenuous acknowledgment of my Author. Mean time, [as in order to such a use I keep them by me, so it is my very great desire that with my best respects, and service to the Gentleman my approved Friend (of whose communicative goodness I have formerly tasted) my hearty thanks may be presented at your next opportunity for intercourse, with my earnest Suit for the continuance of his favour towards, Reverend Sir,

Your most and much oblig'd

WILLIAM SOMNER.]

But

But Mr. *Somner* liv'd not to execute the good design; nor has any yet resum'd it; tho' materials lie ready gathered. For among the printed Authors, left corrected and illustrated by the hand of *Junius*, there is this Lexicon of Mr. *Somner*, with other loose sheets, and the Grammar of *Ælfric* collated with some Manuscripts. Another of these printed volumes was in possession of the foresaid Mr. *George Davenport*, much noted and enlarg'd by the curious owner; and is now in other hands, interleav'd, and much farther improv'd. The want of a new Edition would indeed be superseded, could the world at last enjoy the *Etymologicon Anglicanum*, completed by *F. F. Junius* in two volumes, and that Author's incomparable Lexicon of five Northern languages, which that most worthy Prelate Bishop *Fell* took care to have transcrib'd in eleven volumes: and some few years since, we were encourag'd with the hopes of a speedy publication^b. But chance and change have employ'd mens thoughts another way. Whenever the impression is resolv'd upon, it must pass thro'

^b *Hickeſii Catal. Lib. append. Gram. Sax. p. 147.*

many hands, which will never joyn, if they must return empty. It wants and deserves a public spirit, and a public fund.

The last service of our Author was to publish his *Treatise of Gavelkind, &c. An. 1660.* which I have already mention'd; and need only add, that some reflections were made on this discourse by *Silas Taylor* Gentleman, in his *History of Gavelkind, with the Etymology thereof, &c. London, 1663. 4^{to}.* who, in his Preface, does inform the Reader, that he took occasion to publish his notes of this Tenure, from the late printed *Treatise of that industrious Gentleman, Mr. William Somner of Canterbury*, that he has intermingled those first observations with these Animadversions on his learned discourses: that he entred not on this undertaking to quarrel with him, or with a design to carp at any thing, which he hath laboriously written, &c. This less accurate writer has only attempted to carry the original of the name and of the custom from the Saxons to the Britains; and to prove it not proper to Kent, but of an ancient use in other parts of the Kingdom, &c. In all material points he confirms the opinion of Mr. Somner,

Somner, who in other exceptions has made his own defence in *marginal Notes*, on Mr. Silas Taylor's *Gavelkind History*, correcting his mistakes, &c. And his own printed treatise, when he was after conscious of any omissions, or lighter errors, he supplied and amended with his own hand. Both the books so annotated are now in the *Canterbury Archives*, and will be of great use to the next Editor of this very excellent *Treatise of Gavelkind*.

Tho' our Author publisht nothing more in his own name; yet he was a fellow-labourer in many other works. Particularly in the *second Tome of Councils*, of which the first had been publisht by Sir *Henry Spelman*, London, 1639. who had projected two other volumes. After the Restoration, Archbishop *Sheldon*, and Chancellor *Hide*, importun'd Mr. *Dugdale* to perfect a second Tome, who is said to have added as many Transcripts as now fill 143. of the 200. printed sheets; of which he had several communicated to him by his old faithful Correspondent Mr. *Somner*, from the Registers of *Canterbury*. It was publisht London, 1664. full of mistakes. Mr. *Somner* with great pains and accuracy, collated the
I printed

printed copy with many of the original Records, and in the margin amended the infinite defects. He had before done the same justice to the first Tome; of which he publicly complain'd, that the version of the *Saxon* was faulty, and occasionally gave a more correct interpretation^c. Both these volumes so emended are now in your *Canterbury* Archives; and will lend a very great assistance to any learned man, who has spirit to undertake a second Edition of those Monuments of the Church; for which the world will praise him, and may God reward him. I have now done with the works and more public services of Mr. *Somner*, as an Antiquary and an Author. I would only invite you to look back upon his Loyalty to the King, his affection to the Church, and his integrity to all the world.

His Loyalty was firm and constant, not depending on interest, which might change; but upon a judgment, which could not alter. He adher'd to his *Royal Master*, and dar'd to suffer with him. A man of his parts and acquaintance, might have chosen his office from

^c *Saxon. Diction. in voce* Kintlingtun.

the usurping state, and his portion of lands from the dissolved Church. But he would accept of nothing from those who had no right to give; choosing rather to suffer affliction. He could influence his whole family to the same principles. Both his brothers were true and zealous in the same cause. *John* who was afterwards *Wood-Reeve* to the Archbishop of *Canterbury*, and *George* a Major in the Militia of *Kent*; who appearing at the head of a party in the last effort, which was made by the Royalists in that county, 1648. engag'd the rebels at *Wye* with very unequal force: and tho' he might have safely retir'd, or secur'd his life by asking, he fought on, and fell with honour. Our Author's profession and genius had less adapted him for arms; but he was no less zealous to assert the rights of the Crown, and the Laws of the land, by all the means which his capacity could use. When no endeavours could stop the madness of the people, nor save the effusion of Royal Blood; he could no longer contain himself, but broke into a passionate Elegy, *The insecurity of Princes, considered in an occasional meditation upon the King's late Sufferings and Death.*

Death. Printed in the year, 1648. 4^{to}. And soon after he publisht another affectionate Poem, to which is prefixt the Pourtraicture of *Charles* the first, before his Εικὼν Βασιλική, and this title, *The Frontispiece of the King's book opened with a Poem annexed, The insecurity of Princes, &c.* 4^{to}. He waited all opportunities to serve his banisht Prince; but it was the fate of the honest Gentry to be disappointed in all attempts, and draw down the greater persecution upon their own heads. Mr. *Somner* had his share of sufferings from the jealous powers, and, among other hardships, was imprison'd in the Castle of *Deal* for endeavouring to get hands to petition for a *Free Parliament*; which he foresaw would restore the Church and King. Within a month or two, this method, blest by Providence, gave liberty to him and all the Nation.

[But in the mean time the *Rump*, that was the Power in being, insulted those Gentlemen of *Kent*, with this account of their fruitless Enterprize to make it seem ridiculous; from *Sandwich* in *Kent*. Feb. 3. 1659. Here was lately brought into this town a Paper called *A Declaration*

Declaration of the Nobility, Gentry, Ministry and Commonalty of the County of Kent; the Sum whereof was, after many touches and reflections couched therein to the diminution of the present Parliament, in as good *English* as if it had been penn'd at *Brussels*,—the old Cavaliers in this County have been very active in putting this Paper about for subscriptions. —I hear the Paper hath been at *Rocheſter* and offered to the Corporation Court; as also at *Canterbury*, and ſo ſpread towards *Dover*, and into the iſle of *Thanet*! Sir *William Man*, Sir *John Boys*, and Maſter *Ingeham*, Mr. *SOMNER*, Mr. *John Boys*, Mr. *Lovelace*, and Mr. *Masters* of *Paul's* in *Canterbury* have been taken notice of for this Buſineſs, and divers of the Promoters having been clapt up, the reſt begin to cool, eſpecially ſince they have heard, that General *Monk* in his Answers as he march'd, ſo fully declared his adherence to the Parliament^d. We may preſume that among theſe Instruments of Loyalty, Mr. *Somner* being the chief Penman was employ'd to draw up that *Declaration*, or was at leaſt the chief Promo-

^d *Mercur. Polit. by Order of Parl. 4^{to}. Num. 605, & 606.*

ter of getting Subscriptions to it, and had his greatest share in suffering for it.]

If we next consider his zeal and affection to the *Church of England*, we shall find them arising from a sense of conscience, that no threats or flatteries could move. His own primitive spirit, inclin'd him to the Doctrine and Discipline of true Antiquity; and made him naturally averse to change and innovation. He helpt to sustain the old foundations, as far as his strength and art could do: and when he found they must be overthrown, he was content to be involv'd in the common ruines. He murmured not, but made a soft complaint, that *he was overtaken by the impetuous storm, and necessitated to betake himself to other thoughts; chiefly how he might secure himself against the fury, in warding off the danger, &c.* Yet his cares were more for the public interest, than for his own fortunes: as *Keeper* of the *Archives*, he had been alway faithful in the trust committed to him: But sacrilege and rapine, when they had devour'd the holy things, would have embezled or destroy'd all the Deeds and Records, that convey'd and confirm'd them. This was the practice of those

those blest Reformers. At *Peterburgh* in *April* 1643. a Regiment of horse under Colonel Cromwell, forc'd open the Church doors, tore in pieces the Common-Prayer books, took away the Leiger-book of the Church, broke into the Chapter-house, ransackt the Records, broke the seals, tore the writings, and left the floor cover'd over with torn papers, parchments and seals^e. About the same time a party under command of the Lord Brooks, storm'd and took the Cathedral Church of Litchfield, broke and shot down all the ornaments of it, and cast into flames all the Registers, Charters, Books, and Vestments^f. At Worcester September. 24. 1643. the Army under command of the Earl of Essex, prophan'd the Cathedral, rifled the Library, with the Records and Evidences of the Church^g. The like outrages were committed in the Cathedral of Canterbury, Aug. 26. 1642. by the countenance of Colonel Edwin Sandys, and the madness of Culmer; and much greater spoil had been done to the Muniments and Histories of the

^e *Supplem. to Hist. of Ch. of Peterb. p. 334, 337.* ^f H. Whar-
tom *præfat. ad Ang. Sac. Tom. 1. p. 35.* ^g *Dug. View of troub.*
P. 557.

Church, if the courage and prudence of Mr. Somner had not diverted the thieves, and conceal'd the treasure. Some he repositied in unsuspected hands, and kept others in his own custody; and redeem'd others from the needy soldiers, who (like the old woman with *Tarquin*) would have burnt them, if the price had not been given. Soon after professing, *That his great care should now be to secure and rescue old Records from that scorn, neglect and contempt cast upon them, in the days of so much novelty*^h. Nor did he only preserve the writings, but other ornaments of the desolated Church. Particularly, when the beautiful Font in the nave of that Cathedral (built by the right Reverend *John Warner* Bishop of *Rocheſter*, late Prebendary of *Canterbury*, and consecrated by *John* Lord Bishop of *Oxon.* 1636.) was pulled down, and the materials carried away by the rabble, he enquir'd with great diligence for all the scatter'd pieces, bought them up at his own charge, kept them safe till the King's return, and then delivered them to that worthy Bishop; who

^h *Pref. Treat. Gavelkind.*

reedified his Font, and made it a greater Beauty of Holiness; giving to Mr. *Somner* the just honour, to have a daughter of his own first baptized in it.

This Prelate was he, whom the Fanatics of that age condemn'd for a covetous man. His memory needs no vindication; but give me leave to mention this certain relation of him. When in the days of usurpation, an honest friend paid a visit to him, and upon his Lordship's importunity, told him freely the censures of the world upon him, as of a close and too thrifty temper: the Bishop produc'd a Roll of distressed Clergy, whom in their ejections he had reliev'd with no less than eight thousand pounds: and enquir'd of the same friend, whether he knew of any other the like objects of charity. Upon which motion the Gentleman soon after by letter, recommended a sequestred Divine, to whom at first address he gave one hundred pounds. Let me go on, and tell you, that by his last Will *An. 1666.* he left a personal estate to build an Hospital, for the maintenance of twenty Widows, the Relicts of orthodox and loyal Clergymen, to each an exhibition of twenty pounds

pounds annual, and fifty for a Chaplain to attend upon them. He gave one thousand pounds to encrease the Library of *Magdalen College Oxon.* five hundred pounds to the Library at *Rocheſter*: eight hundred to his *Cathedral Church*, in addition to two hundred, which he had before given: one thousand and fifty pounds to the repair of *St. Paul's* in *London*: two thousand to the buying in of Impropropriations within the Diocess of *Rocheſter*: twenty pounds to the Church of *St. Clement Danes*: twenty to *Bromley*, and a yearly pension to *St. Dionyſe Backchurch*; and fourſcore pounds yearly for the maintenance of four Scholars of the *Scotch Nation*, in *Baliol. Coll. Oxon.* All this was the charity of one ſingle Prelate, who was depriv'd of his Eccleſiaſtic revenues, for more years than he enjoy'd them. He was a peculiar friend to *Mr. Somner*, and the chief contributor to the Impreſſion of his *Saxon Dictionary*, his name ſtanding in the front of thoſe encouragers of learningⁱ.

Let us laſtly reflect on *Mr Somner's* integrity to all the world. This alone can prove

ⁱ *Catal. Append. Sax. Dict.*

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Loyalty and Orthodoxy, not to be the affectation of a party, but the conscience of a Christian. Men may profess any faith, or adopt any cause; but it is innocence and honesty alone, that can prove it a belief, and not a pretension. This proof was given by Mr. *Somner*, who in all his writings had been so plain and sincere, that he would not dissemble a truth, nor suggest a false invention. His profession was, *That he loved truth (the end of all science) for it self; and was altogether unbiass'd with any by respects, whether of vain-glory, singularity, or the like: making it his constant endeavour, that truth alone might triumph over falshood, Antiquity over novelty*^k. How do most Historians betray a partial regard to their Nation, or their party? How many pretenders to Antiquity have conceal'd the notice of whatever oppos'd their own fancy; and rais'd the apparition of Records, to justify the cause for which they wrote? Especially, how do most describers of their native soil take pains to flourish and disguise; and (like Sir *Henry Wotton's* Ambassador) think it even a merit to lie for the honour of their

^k *Pref. to Gavelkind.*

Country? Mr. *Somner* had a probity and excellence of spirit, that made him abhor all such artifice and guile. Let one short instance serve. There were two specious traditions, that seem'd much to illustrate the credit of our County. 1. That the *Kentish-men* were the only *English*, who maintain'd their privileges against *William* the Conqueror, and under the conduct of *Stigand* Archbishop, and *Ægelsme* Abbot of St. *Augustines*, march'd with boughs, and made their composition at *Swanscomb*¹. 2. That, of all Counties, *Kent* alone enjoy'd an immunity from the tenure of villenage, a privilege continued to them by the said Conqueror. Tho' for the honour of his mother County he might have been glad to defend these titles, yet having found them false, he scorn'd to appear an Advocate for them; but refutes them as *Monkish figments, and politically devis'd*¹.

Mr. *Somner*'s whole life was like his writings, void of prejudice and passion: he had that civility, which *Cæsar* observ'd to have been peculiar to the inhabitants of *Kent*^m;

¹ *Treat. of Gavelkind. p. 63, &c.*

^m *Cæsar's Comment. l. 6.*

and that firm resolution, which made our Countrymen claim an ancient privilege, of being plac'd in the front of a battleⁿ. He was courteous, without design; was wise, without a trick; and faithful, without a reward. Humble, and compassionate; moderate, and equal; never fretted by his afflictions; nor elated by the favours of Heaven, and good men. It was his charity, and purity of heart, that prefer'd him to the Mastership of St. *John's Hospital*, in the suburbs of *Canterbury*, *An. 1660*. In which station he did not substract from the pietance of the poor, nor use any arts to rob the spittle; but was tender of their persons, and zealous of their rights. By his Interest and Courage he recovered some parts of their endowment, of which by the Commissioners on the Stat. 37. of *Henry VIII. it had been fleeced, as other like places, by the sacrilegious pilferies of those ravenous and wretched times*^o. It was for the same plain and open honesty, that at the Restoration he was appointed Auditor of *Christ-church Canterbury*, by the Dean and Chapter, to whom he was a Father and Friend, more than

ⁿ Lambard's *Perambulat.* p. 11. ^o *Antiq. Cant.* p. 94.

an honorary servant. He entertain'd them in his own house, till their own were clear'd from the Fanatic Intruders, and made convenient for them. He deliver'd back all their preserv'd writings; inform'd them of all their late alienated lands: received all their Fines, and digested all accounts to universal satisfaction. This settled him such an interest in that Body, and all the members of it, that no private man had an equal influence and authority; which he never employ'd, but to promote some act of charity and justice. He was frequently entrusted by the Dean and Prebendaries, to supervise the public School, to examine Lads, that should be elected King's Scholars; and, upon the like trial, to judge who were most fit for removal to the Universities; in which, his enquiries were exact, and his favours were impartial. His endeavours were to advance the interest and honour of the School, to as high a pitch, as while he was himself a member of it: when his master Mr. *John Ludd*, some years before he died, affirm'd, he had *thirty seven Masters of Arts of his own bringing up*^p. Dr. *Tho. Turner* the worthy Dean,

^p England described by Edw. Leigh. p. 108.

had

had a most peculiar esteem for him, and paid him the frequent visits of a most familiar friend. All the neighbouring Clergy, whom he knew to be of good principles, and honest conversation, he assisted with his knowledge, his interest, and his free advice. I remember to have often heard my Honour'd Father [the Reverend Mr. *Basil Kennet* Vicar of *Postling*,] dwell much upon the fair character of Mr. *Somner*, and represent him as a Patron and Protector of all the regular Clergy. Of his resolute and incorrupted honesty there can be no greater argument than this. Among all his temptations, in several offices, to high and arbitrary fees; among the easy advantages to be brib'd; and the just expectances to be rewarded: among the many opportunities of sharing in the Church's treasure, and taking leases of their land: among the most ready and effectual means to raise an estate, and advance a family: He left but a small competence, which if not frugally manag'd, could never have answered the support of his Widow, and the education of his Children.

By his last Will he gave several Legacies to the poor, and a kind remembrance to Mr.

Stockar then Minister of St. *Ælphège* Canterbury. In the beginning of his last illness he took an opportunity to tell his Wife, that thro' his whole life he had never been let blood, nor taken any physick, which is a just argument, not only of his happy constitution, but of his exact temperance and sobriety. The day of his birth was the day of his death, *March* 30. 1669. aged 63. years; according to the account given by his Wife and Son, who report it from tradition, and some better grounds. But a Certificate from the Register-book of St. *Margaret's* Canterbury, under the hand of Mr. *Tho. Johnson*, represents him to be baptiz'd *Novemb.* 5th. 1598. by which his age must reach to seventy years, five months, &c. Which length of days had almost made him (as *Queen Christina* said lately of her self and *Rome*) one of the Antiquities of the City. He was buried *Apr.* 2. within the Church of St. *Margaret's*, where many of his Ancestors lay interr'd. His grave is distinguisht by no stone, or inscription on it. An omission, that, I presume, was more owing to his own modesty, than any disrespect of his surviving friends. Yet I cannot but admire and lament, that

The LIFE of Mr. SOMNER.

that such learned ashes should lye without a letter on them: that he who rais'd the memory of so many great names, should himself sleep in a place forgotten: and after all his labours, to eternize the tombs and epitaphs of others, should have no such decent ceremony paid to his own dust. Sure the time will come, when some grateful monument shall be erected for him, either by some one of his family, whom Providence shall enable to pay that duty: or by some one generous lover of Antiquities: or by that Capitular Body, to whom he did such great service, and such great honour.

He was twice married. His first wife was Mrs. *Elisabeth Thurgar*, born of a good family in *Cambridgeshire*, with whom he liv'd in love and peace about thirty years; and had by her four children, three daughters, and one son, all dead. His second wife was *Barbara* daughter of Mr. *John Dawson*, a *Kentish* Gentleman, (a great sufferer in the long Rebellion) by whom he had one daughter, that died unmarried, and three sons, of which two are now living: *William Somner* M. A. late of *Merton Coll. Oxon.* now Vicar of *Liminge* in *Kent*, our worthy friend: and *John*, who practises

tises Chirurgery with good repute in those parts. His last wife is now the mourning Relict of Mr. *Henry Hannington*, late Vicar of *Elham*.

His many well selected books, and choice Manuscripts, were purchas'd by the Dean and Chapter, who knew the great value of them, and what a noble addition they would make to the public Library of that Church: where they now remain an inestimable treasure. The catalogue of his *Manuscripts*, I will subjoin to his life, in the same order and words, wherein you have transmitted the account, not doubting your care and exactness in it.

Many of his notes and looser papers were carried from his study to the *Audit-house*, within the precincts of *Christ-Church*; where they were unfortunately burnt, by a fire which happened in that place soon after his death. By this and other accidents, his letters and many memorials of his life are lost. Had they continued to us, we should have better trac'd his friendship and correspondence, with most of the men of honour and learning in that age. From the obscure hints, that now remain, I shall mention some of them.

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First. *Archbishop Laud*, by whose favour and goodness he subsisted in his place and profession^a; who made great use of him in his Articles and Injunctions, sent to the *French and Dutch Congregations* in those parts, *An. 1634.* and in many regulations of the *Diocese and Cathedral*, *An. 1636.* For which dutiful assistance, *Mr. Somner* was publickly charg'd by those foreigners, as accessory to their troubles^r: and he bore from all Schismatic parties a greater share of calumny and persecution, for being (in the brethren's language) one of *Laud's creatures*. The great esteem that Prelate had for him, was not so much for his faithfulness and dexterity in discharge of his office, as for his profound knowledge of Antiquities. For as no one part of learning was unrewarded by that *Great Soul*; so he had a most particular respect to *Historians*, and *Antiquaries*. *Sir Henry Spelman* does gratefully report him a great encourager of his Edition of the *Saxon Councils*^f. *Mr. Jer. Stephens*, by the Archbishop's favour, was made Prebendary of *Bigleswade* in the Church of *Linc.*

^a *Ep. Ded. Antiq. Canterb.*
in Kent. 4^{to}.

^r *Troubles of the foreign Churches*
^f *Pref. Council. Tom. 1.*

as a reward of assisting Sir *Henry Spelman* in that labour^t. *Fr. Junius*, that oracle of the Northern tongues, at his first coming into *England*, was recommended to the *Earl of Arundel*, and retain'd in his family by the interest of *Dr. Laud*, then *Bishop of St. David's*^u. *John*, son of Sir *Henry Spelman*, dedicates to the Archbishop his *Latin Saxon Psalter*, and celebrates him for a *Preserver of ancient Manuscripts, and a Patron of the Saxon tongue*^x. The same excellent Prelate countenanc'd the like studies of Mr. *Somner*, and made use of his assistance in collecting many of those various Manuscripts, which he sent hither to adorn our *Bodley Archives*; of which eighty at least are purely on the subject of National Antiquities. And it is probable, our Author was employ'd further in compiling or digesting that *large book in vellum, fairly written, containing the Records which are in the Tower, and concern the Clergy, ab anno 20. Edw. I. ad an. 14. Edw. IV.* which book the Archbishop got done at his own charge, and left it in his study at

^t *Athen. Oxon*, Tom. 2. p. 230. ^u *F. Jun. de Pictura Veterum*, Præf. 4^{to}. ^x *Ep. Ded. Psalter. Lat. Sax.* 4^{to}.

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Lambeth for posterity, June 10. 1643. [of which Mr. Ryley was the chief Projector.] This was the prudence and honour of that Governour, to consider useful and beneficial men; and should indeed be the spirit of all Patrons, to respect such as can serve them, and the public. For this dependance, and these favours, Mr. Somner was humbly grateful. *Of whom, (says he) to speak, is not a task for my pen, I leave it to posterity hereafter, and to better abilities, to set forth his constant piety, great wisdom, and spotless justice. Howbeit, what all men take unto themselves a liberty to speak of him, I shall be bold to commemorate,—that never to be forgotten gift of his the University Library of Oxford, of an innumerable multitude of choice and rare Manuscripts, with his great care and cost, gathered from all parts, not only of this kingdom, but also of the whole world.*

Archbishop Usher may be justly esteem'd the next friend and Patron of Mr. Somner. How infinite the learning, and how large the goodness of this Prelate, is not to be here ob-

^y *Antiq. of Cant. p. 274, 275.*

serv'd. It is only proper to remark his great zeal in restoring the old *Northern* Antiquities, buried in the *Gothic* and *Anglo-Saxon* tongues. He first mov'd Sir *Henry Spelman* to found a *Saxon* Lecture at *Cambridge*; he made the proposal in *Sidney-College* 1640^z; he recommended Mr. *Abr. Wheelock* to that office^a; he advis'd him the method of reading the *Saxon* Gospels^b; he gave him direction and encouragement to publish his *Saxon* volume; and inform'd him that the *Doxology* in the Lord's Prayer was to be found in the old translation of the Gospels into *Gothic*^c. He furnisht *Fr. Junius* with a MS. copy of *Cædmon's* Paraphrase on *Genesis*: and promoted the Edition of that work^d: which very ancient Manuscript, the Bishop first communicated to Mr. *Somner*, for an account and more legible transcript of it^e. On which occasion, his Lordship was so well convinc'd of the abilities of our Author, that he gave a public approbation to his *Treatise* of *Gavelkind*; he encourag'd his attempts upon a *Saxon* Dictionary; he recommended him to *Roger Spelman* Esq; for

^z *Abr. Wheeloci Epist. Ded. Bedæ, 1644.*

^a *Ibid.*

^b *Ibid.*

^c *Versio & notæ ad Evang. Pers. 1652.*

^d *Somneri præf. Sax.*

Dict.

^e *Ibid.*

enjoyment of the salary settled by his Grandfather on a *Saxon Lecture*^f: and did him all the other true offices of friendship.

Sir *Thomas Cotton* of *Connington Com. Hunting.* Baronet, by an hereditary love of Scholars, was a great Benefactor to Mr. *Somner*, and his studies. He maintain'd an Epistolary correspondence with him, gave him free access to his immense Library; lent him Glossaries, and other remains of ancient letters^g; entertain'd him in his house at *Westminster* some months, to collect and digest his *Saxon Dictionary*; and contributed to the expence of its publication^h.

That great Master of History and Law, Sir *Roger Twisden* of *West-Peckham* in *Kent* Baronet, exchange'd many kind letters, and intimate visits, with our Author; receiv'd from him notes, and corrections, to his edition of the Laws of *Henry* the first; furnish'd him with the chartulary of *St. Augustin's* Abby in *Canterbury*, and other curiositiesⁱ; prevail'd with him to adorn the *X. Scriptores*, with an incomparable Glossary; bore a generous share

^f Somneri *Epist. Ded. Sax. Dict.*
Append.

^g *Sax. Dict. Pref.*

^h *Ibid.*

ⁱ *Treat. of Gavelkind* p. 171.

in the costly edition of his *Saxon Dictionary*^k; and gave him the just character of a man of *primitive probity and candour, a most sagacious searcher into the Antiquities of his Country, and most expert in the Saxon tongue; &c*^l. for which service and civilities, Mr. Somner does more than once acknowledge him *his very noble and learned friend, the prime encourager of his studies*^m.

That great example of industry Sir *W. Dugdale*, by his genius and parity of studies, was directed to the acquaintance of Mr. Somner, and contracted a fast friendship with him. He call'd in his assistance to the magnificent volumes of *Monast. Anglican.* 1655. and 1661. appeal'd to him for the etymology of names of places, to illustrate his *Antiquities of Warwickshire*, 1656. receiv'd from his hands very many of the materials, that fill'd up the second volume of *Provincial Councils*, 1664. depended upon his judgment and information, to complete the Glossary of Sir *Henry Spelman*. He seems to have attempted nothing without his advice, and to have publisht no-

^k *Sax. Dict. Append.*

^l *Twisdeni Epist. ad Lect. X. Script.*

^m *Treat. of Gavelkind, p. 171. & Sax. Dict. in voce cnapian.*

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thing without his approbation: giving among others, this testimony of his respect and love. *In etymologizing the names of Towns and Places, I have not been over bold, &c. Nor should I have adventured thus far, had I not received much light from that learned Gentleman Mr. William Somner of Canterbury, my singular friend, unto whom I cannot attribute enough for his great knowledge in Antiquities, and those commendable works which he hath already, and is now taking pains inⁿ. By this last, he meant the Saxon Dictionary, to which Mr. Dugdale contributed his knowledge and his money, and had this grateful acknowledgment made of it, The great retriever of our English Antiquities, my noble friend, Mr. William Dugdale, one (to do him right) without whose active and effectual assistance, in the publication of it, this work had never seen the light^o.*

The treasurer of Antiquities Mr. Roger Dodsworth, knew the person, and the worth of Mr. Somner. He borrowed from him the

ⁿ Dugdale's Pref. to Warwickshire illustrated. ^o Sax. Dict. in voce Blæpc.

chartulary of *Horton-Monachorum* in Kent^p, and many other evidences of old devotion. He receiv'd from him farther satisfaction in the catalogue of Archdeacons of *Canterbury*, which he had transcrib'd from his *Antiquities* of that City^q: and from his kindness had a copy of many Wills, out of the Registers of that See^r.

Sir *Simonds D'Ewes* Baronet, of *Stow-Hall* in *Suffolk*, a zealous asserter of Antiquities, was not so happy in the use of his own learning, as in his interest with Mr. *Somner*; who instructed him in the notice of many things; and made the better use of his inestimable records; taking occasion to tell the world, of a very rare *Deed or Charter*, taken from an ancient *Manuscript chartulary*, then remaining with Sir *Thomas Cotton*, which he must confess to owe to the courtesie of his late learned friend, Sir *Simonds D'Ewes*.

That excellent Philologer and Antiquary Mr. *William Burton*, had a knowledge and esteem of Mr. *Somner*; when he mentions

^p Roger Dodsworth *Collect* vol. 55. f. 86.
f. 161.

^r Ibid. vol. 17. f. 81.

^q Ibid. vol. 59.

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Canterbury for one of the *Roman* stages, for its modern splendor and glory, he refers his Reader to courteous *Mr. Somner's* description thereof, and approves the derivation of its name, given by that *learned Antiquary*^f: and in fixing other of these ancient stations, he rejects the opinions of *Talbot, Harrison, Camden, &c.* and adheres to *Mr. Somner*, as a very rational Gentleman, who places *Noviomagus* or *Noviodunum* at *Crayford* in *Kent*, very judiciously, as he doth other things. And for the situation of *Durolenum*, he follows the same knowing Gentleman, whom (says he) for his courtesie, and love to ancient studies, I singularly respect: who takes it to have been seated not far from *Newington*, a village on the road from *Rocheſter* to *Canterbury*. In this particular, not a little strengthened in his conjecture, by the multitude of *Roman urns*, lately found in digging there, as is already discovered, and discoursed of by the learned *Meric Casaubon*, his ever honour'd friend^u. This new designation of the *Roman* ways and stages, so happily determin'd by *Mr. Somner*,

^f *Burton comment. on Anton. Itin. p. 185.*^u *Ibid. p. 180.*ⁱ *Ibid. p. 176.*

is allow'd and confirm'd by a Prelate of incomparable knowledge*. [And since by Dr. Plot, Dr. Harris, &c.]

Sir *John Marsham* of *Whornplace* in *Kent*, valued at home, and admir'd abroad for his profound learning, had a just esteem of our Author: and gave him the publick character of *a man most expert in our national Antiquities, the Author of a most useful Glossary, and the Projector of a copious Saxon Dictionary*^y; the Edition of which he encourag'd by a liberal contribution^z.

Sir *Edward Byshe*, *Clarenceaux* King of Arms, had the counsel and assistance of Mr. *Somner*, to improve him in his own profession of Heraldry: kept an Epistolary correspondence with him; and kindly advanc'd the impression of his *Saxon Dictionary*^a.

Another accurate Herald and Antiquary, *Elias Ashmole* Esq;, exhibited to the same work of Mr. *Somner*^b: furnish'd him with many select papers and tracts^c: and receiv'd from him the notice of many books and things, to

* Stillingf. *Orig. Britan.* chap. 2. p. 63. ^y Jo. Marshami
 Προβύλαιον *ad Mon. Angl.* Tom. 1. ^z *Sax. Dict. Append.* ^a Ibid.
^b Ibid. ^c *Sax. Dict. in voce* Tima, &c.

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carry on his complete *History* of the *Order* of the *Garter*, and to fill up his many volumes of elaborate *Collections*, which are now re-
posited in this place^d, by the last Will of that generous Benefactor.

Dr. *Thomas Fuller*, who labour'd for the reputation of an Historian and Antiquary, courted the friendship of our Author: and, had he been more guided by him, would never have defil'd his writings with puns and tales. He closes his discourse of *Canterbury* with these words, *For the rest, I refer the Reader to the pains of my worthy friend, Mr. William Somner, who hath written justum volumen of the antiquities of this City. I am sorry to see him subject bound (betrayed thereto by his own modesty) seeing otherwise, not the City, but the Diocese of Canterbury, had been more adequate to his abilities*^e.

Dr. *William Watts*, the learned and noble Editor of *Matthew Paris*, 1640. in the useful Glossary affixt to that work, was assisted by Mr. *Somner*, who conveyed to him many o-

^d In *Musæo Athmoleano*.
p. 100.

^e Fuller's *worthies of England*,

ther informations, and at last laments him as his *deceased friend*^f.

Mr. *George Davenport*, an absolute Critic in the *Saxon* tongue, was a true and useful friend to Mr. *Somner*, and after publication of the *Saxon* Dictionary, contracted a more firm acquaintance with him: recommended to him some few emendations, and several additions to that work: for which our Author gave him the respectful language of his *approved friend*, of whose *communicative goodness*, he had *formerly tasted*^g, &c.

But in recounting Mr. *Somner*'s friends, it would be injustice to omit his most intimate guide and companion, Dr. *Meric Casaubon*, whose affection to his person, and influence on his studies, have appear'd in many instances before related. Mr. *Somner* very often express'd his grateful sense of obligation: confesses that *to the study of the Saxon tongue* he was *encourag'd by his precious friend*, and ever *honoured Mecnas*, Dr. *Casaubon*^h, who had *admitted him to an entire friendship*, and fami-

^f *Treat. of Gavelkind.*
ber 1664.
Lectur.

^g *MS. Letter of Mr. Somner, 12. October*
^h *Pref. to Treat. of Gavelkind, & Sax. Dict. ad*

liar daily conversation, whose good learning and good nature he could never enough celebrateⁱ: the only Patron of his studies; and one who deserv'd greatly from all that were ambitious of the Saxon tongue^k.

Many other worthy names rewarded the public spirit of Mr. Somner, and contributed to the service he did the world: Sir Orlando Bridgman, Sir Simon Archer, Sir Richard Leveson, Walter Chetwind, Thomas Stanly, Thomas Henshaw, Ralph Sheldon, &c. Esquires; of Divines, Bishop Warner, Dr. Langhain, Mr. Barlow, &c. of Physicians, Dr. Ferne, Dr. Pugh, Dr. Currer, Dr. Rogers, &c. and of our own County, all those Gentlemen who had an affection to virtue and good letters: The Honourable John Finch, Baron of Fordwich; Sir Edward Monins of Waldershire, Sir Norton Knatchbull of Mersham, Sir Richard Hardres of Hardres, Sir Henry Palmer of Wingham, Baronets; Sir Cristopher Harflete of Hackington, Sir Anthony Archer of Bishops-bourn, Sir Thomas Godfrey of Nackington, Sir William Man of Canterbury, Sir John Boys

ⁱ Ibid.^k Sax. Dict. in initio.

of Bonington, Knight; *John Boys* of Fredfield, *John Boys* of Hode-court, *John Boys* of Betheshanger, *Edward Scot* of Scotshall, *Richard Master* of West-Langdon, *Thomas Engeham* of Goodnestone, *James Brockman* of Bitchborough, *Arnold Brames* of Bridge, *Thomas Courthope* of Stodmersh, *Thomas Peke* of Ashe, *Laurence Rooke* of Monks-Horton, Esquires; *Edward Master* of Canterbury, *Herbert Randolph* of Canterbury, *William Randolph* of Bidenden, *Joseph Roberts* of Canterbury, *John Linch* of Staple, Gentlemen, &c. These all did honour to their Country, and to their Families, by serving the interest of Mr. Somner, and the public.

Pray, Sir, accept this plain account of the life of Mr. Somner: and my hearty thanks for your affection to the memory of this good man: and for your care in publishing this excellent part of his works. It is true, to send forth every posthumous tract of learned men, from loose and indigested papers, is an affront to the world: and often seems a libel to the Author, and Editor of them; but where the remains of an accurate writer are left complete and absolute, and argue a design of being
wrote

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wrote for public notice: there, to convey such
reliques to the press, is an office of justice to
the Author, of charity to all the world.

Your Obliged Faithful Friend,

Edm. Hall. Oxon.

Feb. 15. 1693.

Revised in James Street

Westm. Dec. 2. 1725.

White Kennett.



GAVELKIND

Mr. SOMNER's *Posthumous Manuscripts*, now
in the Library of Christ's-Church Canter-
bury.

Collections out of ancient MSS. and Records, re-
lating to the City and Church of *Canterbury*,
and to other Towns and Churches in *Kent*.

Large extracts out of the Chronicle of *William
Thorn*, with other extracts out of the Obituary of
Christ-church, *Canterbury*; and out of the Registers
of the Churches of *Canterbury* and *Rochester*, with
Collections out of the *Saxon Annals*.

Observations upon the Commissary of *Canterbury's*
Patent; being a large discourse concerning the origi-
nal Jurisdiction, Privileges, Laws, &c. of the Spi-
ritual Court.

A discourse of *Portus Iccius*.

A transcript of a large *Saxon* Theological Treatise.

A large Collection, in order to the compiling his
Saxon Dictionary, in two Volumes.

Scholia & Animadversiones in Leges *Henrici* primi,
Regis *Angliæ*, subnectitur Glossarium rerum & ver-
borum difficilium in dictis Legibus. Dedicated to Sir
Roger Twisden.

Collections out of Transcripts of several ancient
Saxon MSS. in two Volumes.

His Antiquities of *Canterbury* interleaved, with
very large additions.

Lamberti Leges Saxonicae. Where he has amend-
ed the translation.

His emendations upon *Spelman's* two Volumes,
where he has Collated the text with MSS. and amend-

ed the *Saxon* Translation, and has gone through the whole work.

His large notes upon *Spelman's* Glossary.

Some marginal notes upon the *Grand custom* of *Normandy*.

Some emendations upon his Treatise of *Gavelkind*.

Another Copy of *Ἀρχαιολογία*, full of Emendations and Annotations throughout.

Marginal notes upon Mr. *Silas Taylor's* *Gavelkind-History*, correcting his mistakes.

Marginal notes upon *Bracton de Legibus Angliæ*.

Marginal notes upon the old Collection of *English* and *Latin* Statutes, printed 1556.

Marginal notes upon *Horn's* Mirrour of Justice.

Marginal notes upon Mr. *Selden's* *Spicilegium ad Eadmerum*; especially an emendation of *Selden's* translation of the Laws of *William the Conquerour*, publish'd by him, p. 173. &c.

Some marginal emendations on *Spelman's* *Saxon* Psalter.

Marginal emendations on *Fox's* *Saxon* Gospels.

Marginal emendations on *Lisle's* *Saxon* monuments.

Large marginal notes upon *Meric Casaubon's* book, *De quatuor Linguis*.

Large marginal notes upon *Verstegan*.

Adversaria in *Spelmanni Glossarium*, in *Watsii Glossarium*, *Matthæo Paris* additum; In tractatum *Gerardi Vossii* de vitio sermonis. In one Volume.

Leges Anglo-Saxonicae, a V. C. *Guil. Lambardo* olim Editæ, ex integro Latinè datæ.

Some Collections towards his intended History of *Kent*.

A
C A T A L O G U E
O F T H E
L O R D S and G E N T L E M E N,
whose Estates have been disgavelled.

Sir Henry Wiat, by Act of Parliament, in the 15th Year of King Henry the VIIIth, procured his Lands in Kent to be disgavelled: As did the Persons here-under named, by an Act passed in the 31st Year of King Henry the VIIth, C. 3.

Thomas Lord Cromwell.	Edward Isaack.
Thomas Lord Burye.	William Whitenhall.
George Lord Cobham.	Thomas Hardrefs.
Andrew Lord Windfore.	Thomas Moyle.
Sir Thomas Cheyney.	James Hales.
Sir Christopher Hales.	John Baker, Esq;.
Anthony Sondes.	Reginald Scott.
Edward Monyns.	John Guldeford.
Edmund Fettiplace.	Thomas Kemp.
Thomas Wilford.	Edward Thwaites.
Geoffrey Lee.	William Roper.
Sir Thomas Willoughby.	Percival Hart.
Sir Anthony St. Leger.	John Fogg.
Sir Edward Wotton.	William Waller.
Sir Edward Bowton.	Thomas Harlackenden.
Sir Roger Cholmley.	Henry Hufsey.
Sir John Champneys.	Thomas Roydon.

Also in the 2^d and 3^d Tears of King Edward the VIth, another Act of Parliament passed, whereby the following Gentlemen obtained their Estates to be changed from the Nature of Gavelkind Descent: Viz.

<i>Sir</i> Thomas Cheyney.	Thomas Harlackenden.
<i>Sir</i> Robert Southwell.	Reginald Peckham.
<i>Sir</i> Edward Wotton.	John Tufton.
<i>Sir</i> Thomas Moyle.	Peter Heyman.
<i>Sir</i> Edward Walsingham.	John Colepeper of Ayles-
<i>Sir</i> Humphrey Style.	ford.
<i>Sir</i> Martin Bowes.	Thomas Colepeper <i>his</i>
<i>Sir</i> Walter Hendley.	<i>Son</i> .
<i>Sir</i> Henry Isley.	William Twisenden.
Thomas Wilford.	Thomas Darell of Scot-
Thomas Lovelace.	ney.
Thomas Watton.	Richard Covert.
Thomas White.	Christopher Blower.
<i>Sir</i> Anthony St. Leger.	Thomas Hendley.
<i>Sir</i> John Baker.	Thomas Harman.
<i>Sir</i> Roger Cholmley.	William Roper.
<i>Sir</i> John Gate.	Thomas Colepeper of
<i>Sir</i> John Guldeford.	Bedgebury.
<i>Sir</i> Thomas Kemp.	John Mayne.
<i>Sir</i> James Hales.	Walter Mayne.
<i>Sir</i> George Harper.	Thomas Argale.
<i>Sir</i> George Blague.	

And again, in the 5th Year of Queen *Elizabeth's* Reign, there was another Act passed whereby the Estates of *Sir Thomas Browne of West-Becheworth in Surrey*, and of *George Brown, Esq;* were disgavelled.

And no doubt very many Estates in *Kent* have been since brought into the same Circumstances.



GAVELKYND.



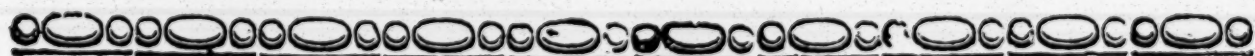
AMONG the many singularities of Kent, that of so much note, both at home and abroad, commonly called *Gavelkynd*, may seem to bear away the bell from all the rest, as being indeed a property of that eminent singularity in the Kentish-mens possessions, so generally in a manner, from great antiquity, over-spreading that County, as England at this day cannot shew her fellow in that particular; yet so unhappy the whilest are both Kentish-men and others, in the right understanding both of name and thing, that although it be the daily subject of every mans discourse, even of all professions, yet remains it hitherto, both in the one respect and in the other, so obscure, and in so much want of further illustration to make it known, as if never yet by any seriously considered of. Purposing therefore to contribute my best assistance towards a right and full discovery; in order thereunto, and for my more methodical proceeding, I shall branch out my discourse into these five following heads or propositions: *viz.*

B

1. The

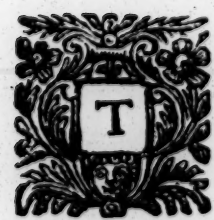
The ETYMOLOGIE

1. The true etymologie and derivation of the name, including a plain confutation of that which is commonly received.
2. The nature of *Gavelkynd*-land in point of partition.
3. The antiquity of *Gavelkynd* custome, in point especially of partition, and why more general in Kent than elsewhere.
4. Whether *Gavelkynd* be properly a Tenure, or a Custome; and if a Custome, whether inherent in the land or not.
5. Whether before the Statute of Wills (32 and 34 *Hen. 8.*) *Gavelkynd*-land in Kent were devisable, or not.



PROPOSITION I.

The true etymologie and derivation of the name, including a plain confutation of that which is commonly received.



O begin with the first: (the true Etymologie and derivation of the name, &c.) By the common and received opinion of these dayes, obvious and easie to be found, both in the writings and discourses of Kentish-men and others, this Custome (as commonly called) owes its name and original to the nature of the land in point of descent. To consult (for instance) a few of the multitude

multitude of printed opinions looking that way, collected from the most eminent of our modern and late Writers, as well Antiquaries as Lawyers, and intending to steer a retrograde course in this research, I shall begin with one of the latest, Sir *Edward Coke*, who in his Notes, or Illustrations upon *Littleton*, tit. Villenage, Sect. 210. verb. *en Gavelkinde*, glosseth the text thus: *Gave all kynd: for* (saith he) *this Custome giveth to all the sons alike.* Not long before him, another learned Knight and famous Antiquary, taking the word to expound in his Glossary of antiquated words, saith, that it is termed *Gavelkynd*, either *Quasi debitum vel tributum soboli, pueris, generi*, i. e. *as it were of right belonging and given* (intimated in the two first syllables, *gafel*, or *gafol* :) *to the issue, children, or kynd*, (signified by the last, *cyn*, or *kynð* :) Or else secondly (saith he) from *gife-eal-cyn*, i. e. *given to all the next in kindred.* *Verstegan* (to ascend in our gradation one step higher) censureth the word of corruption, saying, that it is corruptly termed *Gavelkynd*, for *Give all kynd*, which after him is as much to say, as, Give each child his part. From whom Mr. *Cambden* differs as little in time, as in opinion, when he saith it is called *Gavelkynd*, that is, saith he, *give all kynne.* Before all these, Mr. *Lambard*, (the first that undertook the etymologie, and whom, beside the former, * Judge *Dodderidge*, † Dr. *Cowell*, the Authour of the New Terms of Law, and many more, *longo agmine*, are known to follow) in his explication of Saxon words prefixed to his *Archaion*, verb. *Terra ex scripto*, is clear for the derivation of the word from the Saxon *gife-eal-cyn*: *Credo* (saith he) *ut terra illa Gavelkyn, quasi gife-eal-cyn, id est,*

Sir Hen. Spelman, in voce *Gaveletum*.

Britannia, in Kent.

* The English Lawyer, p. 73.
† Interpreter, in voce.

Perambul. p.
528.

omnibus cognatione proximis data, dicatur. But afterwards, (as if upon second thoughts altered in his opinion) he coupleth this derivation with a second, and so at length is found to share his opinion of the words original between two conjectures, grounded both upon the nature of the land; the one in point of Descent, the other of Rent and Services. In reference to the former of which, he saith, that, *Therefore the land was called either Gavelkyn, in meaning, give all kyn, because it was given to all the next in one line of kinred; or, give all kynd, that is, to all the male children: for kind (saith he) in Dutch signifiet a male child.* And in relation to the latter, he saith, that, *It is well known, that as Knights-Service land required the presence of the Tenant in warfare, and battell abroad: so this land (being of Socage tenure) commanded his attendance at the plough, and other the Lords affairs of husbandry at home: the one by manhood defending the Lords life and person, the other by industry maintaining with rent, corn and victual his estate and family.* This rent (as there he adds) and customary payment of works, the Saxons called *gafol*, and thereof (as I think) they named the land that yeilded it *gafollette* or *gafolcyn*, that is to say, *Land letten for rent, or of the kind to yeild rent, &c.* The Author (I confesse) modestly leaves it free to the Reader to receive either of these conjectures, or to refuse both, as it shall best like him: but the former of the two, being *primâ facie*, of a more plausible sound and allusion than the other, (an advantage very considerable with most men, whose guidance notwithstanding is not alwayes to be followed :) and that having gotten the start of her fellow in time, hath
not

not fail'd to keep it ever since, having proved the more acceptable of the twain, and by this time found so many followers, and those, like the first Authour, of so great credit, as that whosoever shall contradict the one, or dispute the other, can do neither without exceeding prejudice; so difficult a lesson it is with some to unlearn, ^a whose minds are as hardly weaned from an opinion which their fancie hath once approved, as others are from an habit or a custome, which if inveterate and long-settled, though corrupt and vicious, is very hardly left off, and laid aside.

^a See the addition to Dr. Casaubon's Treatise of Use and Custome.

Yet, as the Common Law, ^b determines of a Custome, that if the rise, the original thereof can so be traced, as it can appear that it first began within time of memory, it is no Custome, nor shall obtain or prevail as a Custome; so in case, by tracing the present derivation to the well-head, I shall shew, together with the time, the error of its first original, not to be salv'd by long tract of time, (for, *Quod ab initio non valuit, tractu temporis non convalescit* :) I trust I shall not fail, nor fall short of what mine endeavours drive at in this matter; the weaning (I mean) of sober and judicious minds from an opinion so erroneous and ungrounded as this, I doubt not, upon trial, shall appear to be, though thus long continued, and in it self specious and plausible enough. However, being convinced in mine own judgement of the error, that I may not seem to swallow it for company, to the prejudice of truth, for that (I say) if for no other reason, I have resolved to protest against it: and yet, not to seem singularly affected without a cause, I shall not do it by a bare denial or dissent, as he that thought it sufficient for *Bellarmines* confutation to give him the lie,

^b See Sir Ed. Coke, Instit. part. 1. fol. 115. a.

ff. de Reg. Jur. l. quod ab initio.

but

* Duarenus,
Comment. in
Tit. de Pactis,
p. 49. 2.

but by representing withall my inducements thereunto, I hope to put the matter out of doubt, that I have studied the Readers satisfaction herein as well as my own, by a learned mans^c example, whose words in a like case, as very apposite in this, I shall here borrow for the close of my Apologie: *Etsi me non lateat, (saith he) quàm lubrica, plenaque discriminis res sit, quæ per tot secula, tot homines eruditi uno consensu probarunt, rejicere velle, rationes tamen eas in medium adducere visum est, quibus adductis hanc interpretationem damnare ausus sum.* Nor is this (I take it) *magno conatu nugæ agere*; the discovery and refutation of popular errours having been a task for many worthy pens, in cases of as small concernment as this perhaps may seem to be. To the matter then.

Whether the name of *Gavelkynd* was at first imposed with, or in respect to the nature of the land, in point of descent, or not, is indeed the matter in question. The common opinion (I confesse) affirms it, wherewith joyning issue in the negative, I shall endeavour to refute it by a double proposition; one negative, shewing that this is a wrong, and mistaken; the other positive, or affirmative, declaring what is the right and genuine construction of the term.

As for the former, though it carry with it a seeming allusion to *Gavelkynd* in sound, yet if we look advisedly into the true nature of it, we may, and peradventure must, conclude the etymologie from *Give-all cyn*, *Give all-kynd*, or the like, unnatural at the least, and far fetcht, if not violently forc'd. For first, admitting *Kind* to signifie a male-child in the Dutch or Belgick tongue, as it doth not more than

of GAVELKYND.

7

than a female, being a word common to children of either Sex (*Knecht* indeed with them, as *Cniht* with our Ancestours, the English-Saxons, is of that^d signification:) yet is not this kind of land so restrained in point of descent onely to the males, but that (as in the case of land descendible at the Common Law) the females in their default, that is, where the males are wanting, are capable of succession to it, and in the same way of partition with the males. Nay, is any of the sons dead in the fathers life time, leaving a daughter behind him, such daughter shall divide with her uncles in this land. What then? shall we admit *kynd* to signifie the issue, be it male or female? as indeed it doth either, coming of the Saxon, or old English, *cennan*, or *cennian*, *parere*, to bring forth, whence with them the word or participle *ƿumcenneð*, for the first-begotten, or first-born, *ancenneð*, for the onely begotten, *eopðcennð*, *terrigena*, one that is born, or bred of the earth; yet is not this land so tied to the issue, but that in default thereof, *i. e.* where that is wanting, such as be in the transversal or collateral line (as in other lands descendible at the Common Law) may and do inherit it: as (for instance) when one brother dieth without issue, all the other brethren may and do inherit, as doth their respective issue too, in case of their default, *jure representationis*, but with this restriction in the nephews case succeeding with their uncle, *viz.* that the descent is then *in stirpes*, not *in capita*. Neverthelesse, it goeth not as the Irish^e *Gavelkynd*, to all the males of the same lineage, (for in this, as in other inheritances, *propinquior excludit^f propinquum*) nor yet neither to all the next in one line of kinred, as they pretend that

^d See *Kilianus* Diction. verbo *Knecht*.

Lamb. Peramb. p. 547.

Vid. *Dictionar. nostr. Anglo-Sax. in voce.*

^e *Davies Reports*, Le Irish Cust. de Gavelkind, fol. 49.

^f *Bracton de acquiren. rer. dominio*, fol. 64.

are a.

are for *gife-eal-cyn*, taking *cyn* to signifie kindred, as indeed it doth, for then brothers and sisters both, being alike neer in degree, should equally inherit, (a thing it seems allowed by the old German custom, witnesse what we have from *Tacitus*; *Hæredes successoresque sui cuique liberi*, &c. not restraining the succession to the male-issue, as neither doth the ^b Civil Law:) whereas we know, that as by the ⁱ Feudal Customes abroad, where males are, the females are excluded from succession, so by the Common Law of ^k England, women (or females) shall not partake with males, according to that rule laid down in the Statute called *Prærogativa Regis*, cap. 16. *Fæminæ non participabunt cum masculis*, which (by the way) is understood onely of such as are in equal degree. But doth *cyn* or *kynd* here intend and denote a mans issue, the Gavelkynders children? What may we say then to a conveyance of land in *Gavelkynd* to a Guild, or Corporation, aggregate of many, suppose an Hospital; (as an instance of that nature shall be produced ^l by and by:) they are a dead hand, how then is the etymologie in that case justified? Where's the *kynd*, the parties issue here, to make good the derivation? But since, by occasion, mention is made of such a gift, or conveyance, to strangers from the proper issue or heirs, let me thus far further adde, that in case it be called *Gavelkynd*, from *debitum vel tributum soboli*, i. e. due, or given to the issue, as some are of opinion, how comes it then to passe, that, as before the Statute of Wills, *Gavelkynd*-land might by deed, or other lawful conveyance (and that *Domino*, in this case *inconsulto*, and *invito* too, contrary to the nature of what with

^a De morib. Germanor.

^b L. inter filios. i. famil. hercif. l. si quis à liberis. ff. de lib. agnosc. l. si major. in fi. l. communi divid.

ⁱ Lib. 1. Feud. tit. 6. Parag. 2. & ibi Hotom.

^k Ll. Hen. 1. c. 70. Glanvil. li. 7. c. 3. Bracton, fol. 65. a.

^l And another in the Appendix, Scriptura 9.

with the Feudists is properly termed ^m *Fee* :) be freely given, or sold away from the heir by the custom to a meer stranger, (contrary to the old Common Law of ⁿ England, except in some few cases, as in Frankalmoigne, or in marriage with a mans daughter, a reasonable part might be given, with some limitations and distinctions between Land of Inheritance and Purchase :) as now since the statute of Wills, (if not before, as some of late seek to perswade us, a matter which I shall reserve ^o *altiori indagini* :) it may be, and daily is by devise of will and testament; How is the next heirs right to this land preserved, when there is that freedome of giving, or devising it away? Or how can this liberty and that etymologie consist? Yet further, doth not Mr. *Lambard* somewhere ^p say, that no *Gavelkynd* partition could be challenged, but onely where the custome of division had prevailed, and that *Gavelkynd* was not tried by the manner of Socage-services, but onely by the touch of some former partition? If so, no land then could properly be called *Gavelkynd*, wherein this custome of partition had not yet obtained: what shall then be thought of those new created Tenures in *Gavelkynd*, whereof until the Statute of ^q *Quia emptores terrarum*, examples are very obvious and frequent in the old Records both of the Cathedral at Canterbury, and of the neighbour Abbey of St. *Augustines*, and elsewhere, affording many ancient grants of land in *Gavelkynd*? to what original shall the name there be referred? to any customable partition? nothing lesse: for where can that be found in *Gavelkynd*-land of novel Tenure, for want of that competencie of precursory time of

^m See *Vultei*.
de Feud. li. 1.
c. 8. nu. 37.
p. 341.

ⁿ *Glanvil*. lib. 7.
cap. 1.

^o See the *Proposition*.

^p *Perambul*.
p. 544.

^q Anno 18.
Edw. 1.

* Lib. 3. fol.
374. a.

them necessarily presupposed (to frame the custome in) who conceive the name taken from such accustomed partition? Moreover, if partition were the thing that gave name to *Gavelkynd*, then should all partible land wheresoever be so called: but there is in parts abroad (out of Kent) partible land not called *Gavelkynd*. *Ergo*, &c. For the assumption see the Stat. 32. *Hen.* 8. cap. 29. purposely made to change the customary descent of the land of Osweldbeck Soke or Lordship in Nottinghamshire. And what doth *Bracton* intimate lesse in his *sicut de Gavelkynd, vel alibi ubi terra est partibilis ratione terræ*? Adde hereunto, that the word, as to the main part of it, *Gavel*, frequently occurs in the old records of some manours out of Kent, sometimes simply, but for the most in composition; for example, *Gavel-erth*, *Gavel-ate*, *Gavel-lond*, *Gavel-man*, *Gavel-swine*, *Gavel-wood*, *Gavel-rod*, &c. (of which more anon.) And shall the same thing, (contrary to that rule of Law, l. i. ff. *De rerum permutatione*) *diverso jure censi*? For I suppose none will render it there (being out of Kent, and where no *Gavel-kynd* partition taketh place) *Gife-eal*. Nor will this derivation any better stand with *Gavel*, where it helps to the composition of some words here used in Kent, in former times at least, besides that of *Gavelkynd*, such as are all or most part of those afore-remembered, to which I may adde *Gavel-rip*, *Gavel-ote*, *Gavel-sester*, *Gavel-bred*, *Gavel-bord*, *Gavel-timber*, *Gavel-corn*, *Gavel-refter*, &c. whereof also I shall intreat further by and by. Is it then (lastly) to be supposed, that the lands meer descent in this kind to all the heirs alike, supposing a plurality of heirs,

was

was all the regard those Ancestours of ours had to sway and regulate their judgement by, to whom the name, the term, doth owe its first original? Was that in probability ground enough to satisfy them of the congruity and sutablenesse of the name to and with the nature of the thing named, as names we know should † be? *Vix credo*. I doubt it for my part.

† Conveniunt
rebus nomina
sæpe suis.

In brief then, to recollect what hath been said:
1. If females are capable of this succession, as well as males, where the male issue faileth. 2. If collateral kinred are capable thereof as well as those in the descendent line, where such heirs are wanting, (in both which kinds *Gavelkynd*-land differs not from that at the Common Law:) 3. If Corporations may hold land in *Gavelkynd*. 4. If such land may be passed away to meer strangers from the right heirs. 5. If none may properly be called *Gavelkynd*-land, where an accustomable partition hath not made way for it. 6. If there be partible land elsewhere (out of Kent) that is not called *Gavelkynd*. 7. If *Gavel* (the fore-part of the word) found in some Records of land out of Kent, and of others in Kent, will not bear the derivation of it from *Gife-eal*, without absurdity. 8. And lastly, if names are to be imposed with respect to the nature of what is named, then is *Gavelkynd*, after these mens premised derivation, in some sort a very scant, narrow, and partial, in other a most incongruous and improper term to expresse the nature of the land by. Surely, there was somewhat more peculiar to *Gavelkynd*-land, and of more note and eminencie in it, better serving to distinguish it from other kind of land, than this derivation of

† Nomina cum
re consentiant,
Plato de Sapi-
ent.

theirs seems to intimate, and which first gave occasion to the imposition of that name upon it, which leads me to my other, the positive, or affirmative proposition, asserting the true sense and construction of the term, and shewing whence it was at first imposed, and afterwards continued.

Gafol, what
signifying.

Wherein I must confesse, Mr. *Lambard* was as happy to go right in the latter of his two conjectures, as he was before unluckie to misse of the right in his former, yet in this passively unhappy though, that the former, through the advantages afore-mentioned, wholly took, and was accepted of all, whilest the latter was received and embraced of none: but no great marvel, since, whilest some, through ignorance could not judge of, others haply for company, would not question so plausible a derivation. But to the purpose.

To such as are any thing vers'd in Saxon monuments, *Gafol* is a word very obvious, but varied sometimes in the Dialect, as being written now *gafol*, anon *gaue*, here *gaful*, there *gafel*. I shall give you a few instances where it occurs, and in what sense. Tribute mentioned in the 17 of St. *Matthews* Gospel, verses 24, and 25, as also in the 22 of the same Evangelist, verses 17, and 19, is in the Saxon Translation of the Gospels, turned *gafol*. In the 25 chapter of the same Gospel, at the 27 verse, it serveth to expresse what there in our modern English Translation is called, in some books, *advantage*, in other, *usury*, agreeable to that in the Saxon Psalter, Psal. 54. vers. 11. where *usura* in the Latine, in the marginal version or reading of the word, is rendred *gaue*. *gafola* occurring in the first of King *Withreds* Laws of Sir *Henry Spelmans* Edition, in
the

the first Volume of the Councils, pag. 194. is of that learned Knight expounded to us by *Redditus vel Pensiones*, as it is again in his Latine Version of Pope *Agatho's* decretal Epistle, pag. 164. of the same Councils, by *Redditus*. In an old Sanction of King *Edgars*, recited by Mr. *Selden* in his Notes upon *Ædmerus*, pag. 153. what is there in the Latine read *solitus census*, in the Interlineary Saxon Version we find rendered there *ȝepunlic ȝafol*. Hereunto I might adde heaps of instances taken from the Saxon Laws, the *Mare clausum*, and elsewhere, but I forbear to exspatiate: and to be short, *Gafol* is a word, which, as *Gablum* in Dooms-day-book, the skilful in the Saxon tongue, with Sir *Hen. Spelman* elsewhere, turn by what *Gabella* is expounded abroad, viz. *Vectigal, Portorium, Tributum, Ex-actio, Census*, in Latine, but in English, with *Verstegan, Tribute, Tax, or Custome*, to which with ^f Mr. *Lambard*, and ^t Sr. *Edw. Coke*, let me adde, *Rent*: witnesse, besides the former quotations, what occurs in an ancient will or deed ^u of one *Athelwird*, the Donor of certain land at *Ickham* in Kent to the Cathedral at Canterbury, in the year of mans redemption 958. where you may read: *Deſter hiȝ ȝage Eadrið ȝiȝ he libbe it bpuce wið þone ȝauele þe hiȝ þe ȝecpeþen iȝ, þeȝ ȝynð v. punð, ȝeache ȝepe enne ȝag ȝeȝm into þan hiȝen, þȝ iȝ þanne xl. ȝe ȝceȝȝ eleȝ, &c.* And anon after again: *Ȝiȝ ðane ȝeleke ȝauel þe hiȝ biennen ȝecpe þen iȝ, &c.* The former of which passages, under favour of the skilful in that language, I shall render thus in our modern English: *After his dayes, (or death) Eadrith, if he live, shall enjoy (or use) it, yeilding that rent which is imposed on it, that is, v. pounds, and every year (or yearly) one dayes*

Glossar. verb.
Gabella.

^f Peramb. p.
^{529.}
^t Instit. p. 1.
fol. 142. a.
^u In Archiv.
Eccles. Cant.

[†] forte hepe.

Conteining
four gallons,
so *Fleta* lib. 2.
cap. 12.

dayes farm (or victual) unto the Covent, that is, xl (measures called) Sextaries of ale, &c. And the latter thus: With the same (or like) Rent that herein is appointed. Let me adde what in another like Record, both for time and place, occurs thus. *And eftes hipe ðrege ðage uo re ancebircop Eaðriþe þerra, gif he lang libbe ðanne hi, oðer hþohiþ æftergen- gle ðanne bȳ, bute rume of hipe fpend ðetlonð fupðon on ðar ancebircoper gemeðe ofgon mage toþiȝten gauele, oðer to oðer fopereþe, fpo hit man ðanne uinden mage pið ðane ancebircop ðet ðanne libbe.* That is, *And after both their dayes (or deaths) let Eadsith the Arch-Bishop, if he survive them, have (or take) these lands, or else his Successour for the time being, unlesse some friend of theirs, by (or with) the Arch-Bishops favour, may continue to hold that land at (or upon) the accustomed rent, or upon what other contract (or condition) may be had (or made) with the Arch-Bishop then living, (or, for the time being.)* I shall adde but one instance more from the grant of *Bocking* (a known place in Essex) to the same Cathedral, by one *Ethelrich*, in the year of Christ 997. *And ic gan ðepȝo tpeȳ re hibe þet Eaðpið gaueleteche gepe mið hialue punðe.* That is: *And I also give those two hides (of land) that Eadrith renteth (or hireth) yearly for half a pound.* So that to me it seems clear, that *ponere terram ad gablum*, is as much as to hire, or let out land by or for rent or farm, and by consequence, *terra ad gablum posita*, taken in its proper and genuine acception, is land hired, or letten out to farm, or for rent. In the latitude of the word it comprehends besides, all censual, or tributary land, as also what we call customary land, (in that sense wherein *Consuetudines*, Customes, de-

note * Services) and so takes in all Rent-service land, which with our Saxon Ancestours, who called the rent or service paid or done for such land, y land-
gabel, and land-gafol, was, by a transposition of the syllables, called and known by the name of gafol-
land, or the like: ² butan ðam ceople þe on gafollanðe
jit. i. e. *Except the Churle* (or Countreyman) *that*
occupieth censual land, as one would say now, Ex-
cept the Country Fermor, or the like. He seems
by this to be properly un landagenð, i. e. one that had
no land of his own, such a one as had, being cal-
led land-agenð-man, i. e. *terræ proprietarius*, a landed
man, as the word is (I take it) to be rendred, not
Viator, a way-faring man, or the like, as some ² have
guesſed. But to keep us to our *Gafol*, within and
under which term and notion, not onely the gene-
rality of rent and customary, whether payments or
services, was comprehended and comprised, simply;
but what we at this day call Rent-corn, Rent-honey,
Rent-barley, and the like, the special and particular
rents and services, I mean, by the custome of some
manors yeilded by the Tenants to the Lords there-
of, though now for the most part turned into mo-
neys, were in elder times, in composition, called
Corn-gavel, *Hunig-gavel*, *Bere-gafol*, &c. Without
impertinencie I hope, I shall here present the Reader
with a list of as many of them, as with much con-
tent to my self, I have ransacked old Records to
find out for this purpose, with an assay of mine
own at their severall expositions, and they are di-
visibile into two sorts, the one beginning, the other
ending with *Gavel*. Both of them follow.

² Coke, Instit.
P. 2. P. 58.

² Spelm. Gloss.
in voce.

² Lamb. Archai-
on, fol. 45. cap.
2.

² Spelm. Gloss.
in voce.

Gavel

	corne.	
	erth.	
	rip.	Wood-
	med.	Work-
	ote.	Swine-
	dung.	Corne-
	rod.	Peny-
	tymber.	Malt-
Gavel.	refter.	Lef-
	bord.	Leaf-
	fwine.	Hunig-
	wood.	Were-
	fefter.	Twy-
	werk.	Bere-
	noht.	For-
	fother.	
	bred.	

Gavel-corn.

In the list of the Rents and Services reckoned up in a Lieger-book of the Church of Canterbury, as charged upon that Churches manour of Adesham in Kent, this in particular thus occurs: *Item de Gavel-corn 66. sum.* Doubtlesse it is the same with that in a composition made between the Abbot and Covent of St. *Augustines* at Canterbury, and their Tenants of Minster and Hengrove in Thanet, anno 19. Hen. 6. called *Corn-gavel*, and there thus described: *Et quod quatuor Swillingæ & dimidia, & quarta pars unius Swillingæ residuæ tenebantur & tenentur de prædictis Abbate & Conventu per fidelitatem & relevium, & per redditum & servitium vocatum Corn-gavel, viz. reddendo eisdem Abbati & Conventui, & successoribus suis annuatim,*

Corn-gavel.

in

in festo S. Michaelis Archangeli, de qualibet Swillinga earundem 4. Swillingar. Quindecim quarteria & quinque buschellos ordeï palmalis, & 15 quarteria & 5 buschellos avenarum, & de prædicta medietate & quarta parte unius swillingæ secundum ratam portionis ordeï & avenarum illas medietatem & quartam partem contingentis, deferend. & cariad. ad costas & expensas prædictorum tenentium usque ad granarium dictorum Abbatis & conventus infra monasterium S. Augustini prædictum, vel per servitium reddendi pro qualibet acra dictarum quatuor swillingarum in eod. festo S. Michaelis octo denarios, & pro medietate & quarta parte unius swillingæ secundum ratam portionis illas medietatem & quartam partem unius swillingæ de prædictis ordeo & avena contingentis, in casu quo prædicti tenentes prædictum ordeum & avenam in eodem festo in formâ prædictâ non solverint. Thus the composition, whereby it is apparent what Gavel-corn signifies, namely (as before was intimated) Rent-corn.

In an Accompt-roll of the Arch-Bishop of Canterbury manour of Reculver in Kent, anno 29. Edw. 1. this service, under the title of *Arura*, occurs thus:

Item respondet de xxxv. acris de consuetudine arandi Gavelherthe. In an old Customal* of Gillingham

manour in Kent, of about that age, I read thus: *Item sunt ibi quinque juga, quodlibet arabit unam dimidiam acram ad semen frumenti, & seminabit, & herciabit, & dimidiam acram ad semen ordeï, & herciabit, & unam virgatam ad avenam & herciabit & warectabit, dimidiam acram ad ordeum, & nihil recipient, & vocatur istud opus Gavelerth.*

This then (it seems) is a certain Tillage-service, like the *arura* in *Bracton*, fol. 35. b. due by the

D

Tenant

Gavel-erth.

* In Archiv.
Archiep. Cant.

Bians.
Benerth.

^a Et omnes tenentes de isto iugo debent arare, herciare, seminare, de semine Archiep. unam acram sine cibo, quia Gavelerth. Custumal of Tenham manour.

^b Should he not rather have said, Dominus ab hominibus suis?

Tenant holding his land upon terms of plowing, &c. a certain quantity (more or lesse) of his Lords Demesnes, not alwayes performed in kind, but bought out and redeemed sometimes with money. *Et de 10. sol. de 10. acris de Gavelerth relaxato hoc anno*, quoth an old Rental *sans date* of the Arch-Bishops foresaid manour of Reculver. It was of some affinity, as with the French Poictovines *Bians*, so also with that which Mr. *Lambard* calling *Benerth*, expoundeth by service which the Tenant doth with his cart and plough. With his plough indeed, and also with his harrow, but not (that I find) with his cart, it being a meer tillage-service, as *Gavelerth* is, and alwayes performed *precario*, as the Frenchman saith, *precairement*, upon request and summons, (in aid, and for the help and ease, when need was, of other Tenants bound to do the like *de gablo*, i. e. as I conceive, *ex debito*, and without summons:) and with allowance of (more than regularly was afforded in the other ^a service) a coredy, i. e. diet, or victual, (sometime called *Benebred*) during the employment. Glanvils *precarias carucarum forinsecarum*, lib. 8. cap. 3. may hence be understood. *Matthew Paris* in his History of England, pag. 895. of the last Edition, making mention of a *Breve inauditum*, (as he there calls it) i. e. an unheard of Writ, issued by *Hen. 3.* recites this as a part of it: *Similiter inquiratur de carucis precariis*, which by the learned Authour of the Glossary, at the end of the work, is thus illustrated: *Erant & precarie* (saith he, speaking of several sorts of Ploughs) *quas scilicet in necessitate aliqua eminentiori, colonus unus à proximo^b precario mutuabatur*. Hence the phrase in many old Custumals and Rentals of plowing this or that

that quantity of the Lords land by his Tenant, *de prece, de precaria, ad precariam*, and the like. In *precariis carucarum & in auxilio herciandi vj. sol. viij. den.* saith an old Accompt-roll^c of Saltwood manour. The meaning of such passages in records of that kind as this: *arant preces semel ad conredium*^d *Curia*, &c. and the like may hence be pick'd out. It took name (this of *Benertb*) I conceive, of the Saxon bene, *postulatio*, as Mr. *Lambard*, and before him *Jornadensis*, translating the Saxon Laws, turn the word occurring in the title of the eighth of King *Ina's* Laws, as Sir *Hen. Spelman* doth by *Rogatis*, Concil. tom. 1. pag. 583. Whence (probably) *Fleta*, lib. 2. cap. 84. speaking of those Ploughs, calls them *Carucas rogatas*.

^c In Archiv. memorat.

^d Custumal of Monkton manour in Thet.

A certain Service (the same, I take it, with *Bractons messura*, fol. 35. b.) undergone by the Tenants of some manours tied to reap their Lords corn for him, which if redeemed, or taken in money, was usually termed *Rip-silver*. Of the former, in the Custumal^e of Westwell manour in Kent, I read: *De consuetudine metendi xl. acras & dimid. de Gavel-rip in autumpno xl. s. vj. d.* And in another like record, I meet with the latter thus explained to our hand: *De sulinga de Witstable xvj. de Rip-silver, quia homines de Witstable solebant antiquitus metere apud Bertonam.* And as in Tillage-service, certain Tenants were bound to it *de gablo*, others *de prece*; and thence the one service called *Gavel-ertb*, the other *Benertb*; so for reaping also, there were some that held by *Gavelrip*-service, other by *Bedrip*-service, (the old Glossary at the end of *Hen. 1.* Laws hath it *Benripe*;) that done *de gablo*, without any bidding or summons, and for the most part

Gavel-rip.

^e In Armar. Eccles. Cant.

Ripsilver.

Bedrip.

Benrip.

Bidrip.

See Spelm.
Glossa. in Be-
dellus.

^f In Archiv.
Archiep. Cant.
Gavel-med.

* In Archiv.
memorat.

without coredy; this *de prece*, upon bidding or summons, and regularly with coredy: *In villa de Ickham* (saith the old Custumal of that manour of Christ-Church) *sunt xvj. Cotarii, quorum quilibet habet v. acras, & hæ sunt earum consuetudines: Ducunt brasum, &c. & quilibet tres preces, i. e.* (saith the old marginal Glosse there) *quando rogan- tur per servientem Curie, debent metere, sive aliud facere quod expedit Domino per tres dies, & si no- luerint facere, possint artari, &c.* As I gave you some instances before of *Gavelrip*, so I might also of *Bedrip*; but, for brevity sake, I will onely re- fer you to that in Sir *Hen. Spelmans* Glossary, verbo *Bidripa*, which being barely mentioned there with- out exposition, may hence be understood. And as *Bene* in *Benertb* is of a Saxon original, so like- wise *Bede* here in *Bedrip*; and indeed they are uni- vocal, drawn (this) from the Saxon *biddan*, *petere*, *rogare*, and applied to this service upon the same ground that *býdel*, to a Crier, Beadle, Summoner, Bailiffe, so called from his office, which is to warn, summon, give notice, &c. as these Tenants were to be warned, summoned, in a word, bidden, to come and perform this service: *Et de Cxcix. ope- ribus magnæ precariæ provenien. de omnib. tenenti- bus Domini, tam liberis, quàm nativis, infra domi- nium Domini, quorum quilibet domum habens de quo fumus exiit, inveniet unum hominem ad mag- nam precariam, si ad hoc summonitus fuerit, &c.* as it is in Accompt^f of the manour of Harwe, now called Harrow in Middlesex, *anno 21. Rich. 2.*

A service of much affinity with the former. In an Accompt-roll* of Terring manour in Suffex, *anno 11. Edw. 1.* it occurs thus: *Consuetudo me- tendi*

tendi quæ vocatur Gavelrip, follows Consuetudo falcandi quæ vocatur Gavelmed. And anon after: Et pro una septimana dum falcatur stipula quæ vocatur Gavelmed. It needs no further opening.

A certain proportion of Rent-oats served in some-
time in kind, other while by composition redeemed
with money. As to the former, (its payment in
kind) I read thus in an ^g old Custumal, (*sans date*) ^g In Archiv.
of Southmallling manour in Suffex: *Borga de Wel-* memorat.
lingham. Operarii. Omnes isti operarii de W. de-
bent reddere annuatim de qualibet virgata unum
quarterium avenæ, quod dicitur Gavelote in xl^{ma}.
In an Accompt-roll of the same manour, I find a
charge futable: *Idem respondet de octo quarteriis,*
quatuor bush. avenæ receptis de gabulo Custumario-
rum de Wellingham. And for the redeeming it
with money, an old ^h Accompt, (*sans date*) of the ^h Ubi sup.
Abbey of St. *Augustines* manours of Snavæ and
Borewaremersh in Rumney mersh, furnish us with
an instance of it thus: *Et de avena de gablo ven-*
dita iij. s. Like to that in old ⁱ Accompt-roll of ⁱ Ubi sup.
Gillingham manour by Rochester: *Et de x. s. vj. d.*
de quinque quarteriis, duob. bush. de Gavelote de
redditu venditis.

A service (like to that spoken of by Littleton, ^{Gavel-dung.}
under the title of Villenage) to carry the Lords dung
out of the site of the manour, unto the land of
his Lord, &c. whereof in an ^k Accompt-roll of ^k Ubi sup.
Shorham manour in Suffex, of about *Edw. i.* time,
under the title of *Consuetudines & servitia de om-*
nibus Borgkis extra boscum præter Suthram, I read
in the Accomptants charge as followeth: *Idem re-*
spondet de consuetudine extrahendi fimum debita per
Custumarios tenentes xxvij. virgatas, dimid. & j. fer-
ling.

*ling. in Borgh de Gote, Middelham, Astone, North-
lington, & Wellingham in una septimana post festum
S. Michaelis cum auxilio Molmannorum, quod servi-
tium vocatur Gaveldung.* See the Grand Customier
of Normandy, cap. 53. *in fine.*

Gavel-rod.

^l Ubi supra.

What service this was, the place it self where it
occurs sufficiently explaines unto us, and that is an
old ^l Extent of the manour of Terring in Suffex,
anno 5. Edw. 1. where under the title of *Virgatarii
operarii de Wadeherst*, we have it thus: *In borga de
Wadeherst sunt xv. virgatæ, dimid. & j. firling
terræ nativæ, quarum quælibet debet claudere unam
perticatam sepi circa curiam de Malling, & debet
pro pollis & claustra quam facere solebat ad Nata-
lem beati Johannis Baptiste annuatim reddere j. d.
ob. quod dicitur Gavelrod & Burghard, &c.*

Burgh-yard.

Gavel-timber.

^m Ubi sup.

Certain Rent-timber to be used in repairing the
Lords mansion-house, or some appertaining Edifice,
and as some Records do specific it, *Rafters*. Whence
in an ^m Accompt-roll of Norbourne manour in East
Kent, *anno 31. Edw. 3.* as a part of the Accompt-
ants charge there, I read thus: *Et de CC. refters
de Gavel-tymber, de redditu, quilibet de longitudine
xiiij. ped. de quibus proveniunt de tenemento de Bore-
waresyle C. & de tenemento de Monynden C.* An-
other like Roll of the same manour calls it *Gavel
refter*. And much of the same nature was the next
called *Gavel-bord*, whereof in the last cited roll
mention is thus made. *Et de CCC. Gavelbordis
de redditu, quilibet de longitudine iij. ped. dimid.
unde, &c.* These rents and services were wont to
be charged upon their Wealdish Tenants, such as
occupied their Wood-lands. And so was the next.

Gavel-refter.

Gavel-bord.

And by an inversion of the syllables, *Swine-gavel*. Gavel-swine. A wealdish service (I say) signifying Rent-hogs, or Rent-swine, so called when paid in kind, (*Et de vij. s. x. d. de iij. porcis de gablo venditis ad parocum de Maghefeld, &c.* As it is in a rollⁿ of accompts of Mayfield manour in Suffex, *anno* Ubi sup. *Edw. 3.*) otherwise *Swine-paneges*, and *Swine-money*, Swine-paneges. and the like, when namely they were redeemed with Swine-money. the peny, or with money, which was usually paid at *Paroc*-time, that is, when the Lord, or his Bailiffe and Tenants met upon the place in the Weald, to hold a *Paroc*, a Court-like kind of meeting, Paroc. (whereof I have by me a record of some kept about *Edw. 1.* time) not much unlike the Forest *Swainemote*, where (*inter alia*) an accompt was taken of this service in particular, and generally of what hogs or swine had been taken in to feed and fatten the year past, or the last Pawnage or masting-time, and rent accordingly paid and received for the same. Hence I take it (from *Paroc*, I mean,) the name of that place by Bleane-wood near Canterbury, which we at this day call the *Paddock*, for the *Paroc*.

Sometimes written and called *Wood-lode*, *Wald-lode*, and otherwhile, by an inversion of the syllables, *Wood-gavel*: a custome or service incident to some Tenants, to carry home their Lords wood for him. An old^o Accompt-roll (*sans date*) of the^o Ubi sup. Arch-Bishop of Canterburies manours, in South-malling, hath this mention of it in the Accomptants charge: *Et de xvij. s. iij. d. ob. de fine cariandi Gavelwood de consuetudine.* It often occurs in like records of divers other manours, under that diversity of names.

A cer-

Gavel-sefter.

A certain measure of Rent-ale. Among the articles to be charged upon the Stewards and Bailives of the Church of Canterburies manours *infra Cantiam*, according to which they were to be accomptable, this was wont to be one: *De Gavelsefter cujuslibet bracini braciati infra libertatem maneriorum, viz. unam lagenam & dimidium cervisiæ*. Another old Record calls it *Tolsefter* in these words: *De Tolsefter cervis. hoc est de quolibet bracino per annum unam lagenam de cervis.* as it is in an old book of the same Cathedral, amongst the rents of Assise of Halton manour in being undoubtedly the same, in lieu whereof the Abbot of Abbington was wont of custome to receive that peny mentioned by Mr. *Selden*, in his learned Dissertation annexed unto *Fleta*, newly published, *cap. 8. num. 3.* and there (by some mistake, haply of the Printer) termed *Colcester peny*, for *Tolsefter peny*. Nor differs it (I take it) from what in the Glossary at the end of *Hen. 1. Laws* is called *Oale-gavel*.

Oale-gavel.

Gavel-werk.

P Ubi sup.

A service charged upon Tenants, for example; In Charing manour in Kent, an old P Rental whereof of *Edw. 1.* time hath it thus: *Grenehelle Eadmundus filius Thomæ de Grenehelle de uno jugo debet, &c. — arabit unam acram 6. pedes, & metet unam acram, dimid. & 9. pedes, de Gavelwerk.* This admitting also of a transposition of the syllables, is sometimes found written *Werk-gavel*, in barbarous Latine, *Werkgabulum*, as in an A Accomptroll of the Arch-Bishops manour of Tunebrugge (now called Tunbridge) of *Hen. 3.* time, and signified Rent-work, which was of two sorts, the one personal, by the Tenants person, which they called *Manuopera*; the other by his carriages, thence termed *Carropera*,

A Ubi sup.

Manuopera.

Carropera, and they both met (I take it) in Villeins *Carropera* called *Gaigneurs*.

In an old Custumal of our Cathedral at Canterbury manour of Clyve in Kent, I find them thus coupled: *De Gavelnoht vel Gavelfother de Ostreland*. The latter seemeth to expound the former, shewing them both to import what at this day we call Rent-fodder: the latter word in which composition cometh (as I suppose) of the Teutonick *Voeder*, or the German *Futer*, which we at this day pronounce *Fodder*. Of the Feudists it is called *Fodrum*, to whom I refer such as desire a further explanation of the term, wherein the learned *Hotoman* (I take it) is more copious than the rest, in his Commentary *De verbis feudalibus*, in voce. Let them also have recourse to our learned Glossarist, in verbo *Fodrum*.

In the Custumal of the same Churches manour of Chartham in Kent, it occurs thus: *Allocantur per annum pro Gavelbred ad herdemet. iij. sum. dimid.* It is the same (I take it) which I find elsewhere thus expressed: *In pane ad Gavelbred, de consuetudine arantium & metentium, ij. sum.* So an Accompt-roll^r of Charing manour in *Edw. i.* time. Nor is it probably any other than what in the Custumal^r of West-Farlegh manour in Kent is termed *Averbred*. *Allocantur per annum pro averbred, iij. s. ij. d.* It seems to be a proportion of food or victual allowed to the baser sort of Tenants, such as the *Custumarii*, *Cotarii*, *Villani*, and the like (the *Gaigneurs*) towards their coredy, or sustentation, during their employments in the Villein-services of their Lords, such as those reckoned up by the Author of the *Mirroir*, chap. 2. sect. 28. where he saith: *Et ascuns per villeins customes d' arrer, ower, charrier,*

Gavel-noht.
Gavel-fother.

Fodrum.

Gavel-bred.

^r Ubi sup.

^r In Archiv.
Eccles. Cant.
Averbred.

Gaigneurs.

charrier, sarclir, fauchir, scier, tasser, battre, ou tielx autres manners d' services, which were not alwayes attended with such allowance; whence my Authour goes on, adding, & *ascun foits sans reprise d' manger*. And thus far of the particular rents and services, whose names begin with *Gavel*, to which I might adde that of *garol hytel*, occurring in the Laws of King *Ina*, cap. 44. Now to proceed to those ending with it.

Wood-gavel.
Werk-gavel.
Swine-gavel.
Corn-gavel.

Of which the first four, (*Wood-gavel, Werk-gavel, Swine-gavel, Corn-gavel*) having their severall expositions in their proper places, *viz.* in the former list of services, whose names begin with *Gavel*, I passe from them to the rest of like termination.

Peny-gavel.

In the Conquerours, and some succeeding Kings Charters, made to St. *Augustines* Abbey at Canterbury, the present service occurs by the name of *Gabulum denariorum*, the tithe whereof here excepted from these, was elsewhere granted unto other Monks, whereof see Mr. *Seldens* History of Tithes, pag. 321, 330, 331. It was a rent usually reserved and paid in money, witnesse the mention and description of it in that composition, between the Abbat and Covent of St. *Augustines* and the men of Thanet, whereof before in *Gavel-corn*, and speaketh thus: — *Tenantur de prædictis Abbate & Coventu & Prædecessoribus suis per fidelitatem & relevium, & per redditum & servitium vocatum Peny-gavel, viz. reddendo annuatim eisdem Abbati & Coventui & eorum Successoribus de qualibet swillinga dictarum xliij. swillingarum in festo S. Martini in hyeme decem & novem solidos & octo denarios, & de prædicta quarta parte unius Swillingæ in eodem festo annuatim quatuor solidos & undecim denarios,*

& pro qualibet acra dictarum xxxviij. acrarum terræ de Swillingland in eodem festo secundum ratam portionis redditus easdem xxxviij. acras terræ contingentes, &c,

In the Custumal of the Church of Canterburies manour of Mepham in Kent, amongst the rest of the rents and services there, this occurs for one: *De xxj. sum. iiij. bush. de Malt-gavel, &c.* It signifies Rent-malt, and is the same (I take it) that in another like Record (an old Rental of Eastry manour in Kent) is called *Malt-shot*, and thus expressed there. *De Malt-shot termino circumcisionis Domini xx. d.* But so called, I trow, when compounded for in money; otherwise, upon the same ground, *Malt-peny*, as the old Customal of the same manour frequently nameth it.

So called, peradventure, in relation to some greater rent or service arising and paid out of the same land, that this, at some other part or season of the year (I guess hereat by an old Customal of Charing manour, where indeed I found it so:) and so *Lef-gavel*, quasi *Lesle-rent*, or *Lesle-service*. I take it to be the same that in the Customals and Rentals of some other manours, I find written *Lesyeld*, and *Lesgeld*; unless it be mistaken for the next, *Leaf-gavel*, thus occurring in an old Accompt-roll of the Church of Canterbury: *Et de xii. l. iiij. d. ob. de annuo redditu assis. cum Leaf-gabulo ad terminum S. Martini*; which I conceive to be the same with what in a like Record of Hathewolden (now Halden) manour in Kent, is called *Lef-silver*: *Et de xvij. d. de Lef-silver in Hathewoldum.* The old Customal of Tenham manour in Kent, calling it *Lyef-yield*, thus explains it: *Tenentes de Waldis non*

Malt-gavel.

Malt-shot.

Malt-peny.

Lef-gavel.

In Archiv. Archiep. Cant.

Lef-yeld,
Lef-geld.
Leaf-gavel.

Lef-silver.

Lyef-yield.

possunt arare terras suas ab equinoctio autumpnali usque festum beati Martini sine licentia. Et ideo, reddunt annuatim dimidiam marcam ad festum S. Martini, sive fuerit Pessona, sive non. Et vocatur Lyef-yeld. Whereby it seems to be a tribute paid by certain Wealdish Tenants, for liberty to plow their grounds during a certain season of the year, viz. *tempore Pessonæ*, which, because of some prejudice that might thereby redound to the Lord in his Pawnage, was not permitted without his leave.

Hunig-gavel.

^u Ubi sup.

^x Ubi sup.

Gabulum mellis, as the old ^u Rentals of Chistlet manour in Kent seem to term what some ancient Accompt-rolls ^x of Otteford and other manours call *Hunigaved*, both one and t'other signifying Rent-honey.

Were-gavel.

^y In Archiv.
Eccles. Cant.

Item de Weregavel vj. d. aliquando tamen plus, aliquando minus. Thus in the ^y Custumal of the Canterbury Cathedrals manour of Leisdowne in the Isle of Shepey. It seems to be a rent paid in respect of Wears or Kiddels, to catch fish withall, pitch'd and plac'd by the Sea-coasts, and, until *Magna Charta* forbade it, in some rivers too, whereof see further in Sir Hen. Spelmans Glossary, verbo *Kidellus*; and in Sir Edw. Cokes Institutes, part 2. pag. 38. and elsewhere.

Twy-gavel.

^z In Archiv.
Archiep. Cant.

In an ^z Accompt-roll of the manour of Reculver in Kent, anno 16. Edw. 3. this service, in the charge there, thus occurs: *Idem respondet de 814. & dimid. ped. clausur. hayag. fac. circa manerium, ex consuetudine, unde de Twygavel 200.* I meet with it elsewhere also, but with explanation no where. Taking liberty of conjecture, I conceive it to be some double kinde of service by the *Twy* preposed, as elsewhere *Twysket* (an imposition upon the Tenants of

Twy-sket.

of Aldington manour by Romney-mersh, for maintaining the Sea-coasts there, and other like defences against inundations :) is termed *Duplum*, as thus: *Computus de duplo Wallæ, quod vocatur Twysket*. So the Accompt-roll of that manour in the sixth year of St. *Edmunds* Archbishoprick.

Is termed of our learned Glossarist, verb. *Bere-* Bere-gafol.
wica, by *Tributum hordeaceum*: elsewhere, viz. verb.
Gabella, by *Redditus hordeaceus*. You shall finde it
in the 60th. of King *Ina's* Laws, in Mr. *Lambards*
Archaion. If it were not Rent-barley, I should
take it for the *Drincelean*, occurring, as in the last Drincelean.
chapter of the *Leges Presbyterorum Northumbren-*
sium, in Sir *Hen. Spelmans* Councils, pag. 502. So
also in the 87th of King *Cnutes* Laws in the Ar-
chaion, and in this latter place rendred in the old
Version in *Brampton*, (just as *Oryncelan*, mistaken
for *Drincelan*, in the old Glossary at the end of
Hen. 1. Laws) by *Retributio potus*. If so, it seems
to be the same with what was afterwards called
Scot-ale, whereof you may read in *Matth. Paris*, Scot-ale.
the Charter of the Forest, *Braetton*, the *Mirroir*, and
elsewhere. King *Hen. 2.* in his charter to the citi-
zens of Canterbury, acquits them of it: *Ita quod*
(saith he) Vicecomes meus Cantuar. vel aliquis alius
Ballivus Scotalam non faciet. It's sometimes called
Potura, and was a contribution by the men and Potura.
Tenants towards a Potation, i. e. a Drinking, or
(as some yet speak) an Ale, provided to entertain
the Lord or his Bailiffe withall, coming to keep
Court, or the like, raised by a proportion or rate
(more or lesse) according to the Tenant, better or
meaner condition. In an old ^a Custumal of South-
mallings manour in Suffex, in that part of it intituled,

^a In Archiv.
memorat.

Bortha

^b Ubi sup.

Fildale.

Fildale.

Gild-ale.

For-gavel.

^c In Archiv.
Ecclef. Cant.

^d See the Mir-
roir, p. 16.

Bortha de Fremfeld, I read as followeth: *Item si Dominus Archiepiscopus fecerit Scotall. infra boscum, quilibet terram tenens dabit ibi pro se & uxore sua iij. ob. & vidua vel Kotarius j. d.* In the ^b Extent of the manour of Terring (to give you another instance) anno 5. Edw. 1. this Scot-ale-service is thus remembred: *Lewes. Memorandum quod prædicti tenentes debent de consuetudine inter eas facere Scot-alium de xvj. d. & ob. ita quod de singulis sex denar. detur j. d. ob. ad potandum Bedello Domini Archiepiscopi super prædictum feodum.* *Bracton* saith, It is sometimes called *Fildale* (fol. 117. b.) which our learned Glossarist, *in voce*, correcting, reads *Fildale*, and is in some sort followed by Sir *Edw. Coke*, Institut. part 4. pag. 307. With the *Varia lectio* before *Bracton*, I should rather read it *Gild-ale*, and then indeed, as it comes neerer the other *Scot-ale*, so with that better answers to our present *Bere-gafol*; *Gild*, *Gafol* and *Scot*, being as it were *Synonyma*, and univocal.

Observed to be alwayes paid by the Tenant *per avail* to the mesne Lord, not to the chief, and thence called in some old records and deeds, *Forisgabulum, quasi extra (vel præter) gabulum quod Domino capitali debetur*: just like the French mans *Surcens*. Will you have an example? *John* then the son of *Richard* at Horsfald, by his ^c deed, dated anno 1242. gives to *Warin* of Stablegate, a parcel of land, to be holden to him and his heirs, or to whomsoever he shall give, sell, or assigne it, (a clause without which, by the account of those elder times, land was not alienable from the proper ^d heirs :) paying to the Prior and Covent of Christ-church Canterbury (Lords, it seems, of the Fee) certain annual

nual rent and hens, and to the Feoffor and his heirs j. d. yearly, *de forgabulo*, &c. Some other instances of this kind might be added, but I must contract, passing over *Metegavel*, whereof mention is made in the old Glossary, at the end of *Hen. 1. Laws*, and there in Latine rendred *Cibi gablum*. Now a word or two of *Gavelet*. Mete gavel.

This, I must tell you, was no Rent or Service, but betokeneth a rent or service with-held, denied or deteined, causing the tenements forfeiture to the Lord; whence those words of *Fleta*, reciting the Statute *De Gavelleto: Et ex tunc vocentur tenementa illa* (not *Forscheke*, as in *Tottells* Edition of the Statute, followed by *Cowell* in his Interpreter, but) *Forisfacta*. See *Fleta*, pag. 119. It is taken (I confesse) of some for a Synonymy with *Gavelkynd*, and to import land letten for rent, or the like; and *per me licet*, the acception shall passe for me, as warrantable enough from the latitude of the term; but in the sence wherein the Statute (*10. Edw. 2.*) and other ancient records (all that I have ever view'd) do take it up, it seems to carry no other meaning than the deteinment of rent or service, whence that of *Sir Edw. Coke: Gaveletum* (saith he; I adventure to correct it so, as supposing it corruptly printed *Gamelletum*) is as much to say, as to cease, or let to pay the rent. *Breve de Gavelleto in London est breve de Cessavit in biennium, &c. pro redditu ibidem, quia tenementa fuerunt indistringibilia*. Thus he. In the Kentish Eyre of *Hervicus de Stanton*, recorded in a Manuscript of *St. Austins* at Canterbury, among the Pleas there concerning the Abbat and Covent, pag. 106. it occurs thus: *Et postea per quandam consuetudinem quæ vocatur Gavelate usitatam* Gavelet.
Gavelate.

* Instit. par. 2.
pag. 204.

tam in comitatu isto de terris & tenementis de Gavelkinde, pro redditibus & servitiis quæ à retro fuerint de eisdem per plures annos devenerunt eadem terræ in manus cujusdam Abbatis, &c. I have often met with the word in old Accompts of the Archbishops manours, from which I could present you with a cloud of instances, but for brevity sake, I shall trouble you but with one, and that taken from a ^f Roll of Ringemere in Suffex, in *Edw. 3.* time. *Item* (saith the Roll) *de defectu redditus cujusdam curtilagii jacentis Gavellate quod fuit Aliciæ Hammerii, per annum in manu Domini iiij. d.* The fence, I trow, which I gave you of *Gavelet*, is by this time sufficiently asserted, which, if compared with the term it self, will appear very natural, being derived and compounded of *Gavel* and *let*, or *late*; a word (this latter) fetch'd at first (if I mistake not) from the Teutonick *Laeten*, signifying, as we are taught by *Kilianus* in his Etymologick Dictionary, *linquere, relinquere, omittere, dimittere*, just (I take it) as our old Saxon *lætan* seems to do. The Germans have it *Lassen*, the French *Laisser*, we at this day *Let*. The termination is found in some other words now antiquated and obsolete as well as this: for example, in *Here slit*, which by the common opinion of Expositours, sounds as much as *armorum depositio*, or *exercitus desertio*, coming from *Her*, (saith *Lindembrog* in his Glossary) *exercitus*, and *lassen, deserere*. Sir *Hen. Spelman* (I confesse) as to this latter syllable, is of another mind, writing it *slit*, and *slite*, and construing it by *fissura, diruptio, separatio*, and so will have *Here slit* to signifie *diruptionem exercitus*. For my part, under favour, I conceive, that between the latter syllable in *Here slit*, and the latter syllables in

^f In Archiv.
Archiep. Cant.

Here slit.

in *Laghslite*, *Manслиhte*, *Theofслиhte*, and the like, there is this difference to be observed, that namely in the former, *Hereſlit*, the latter ſyllable is *lit*, (the *ſ*. being here a note of the ^g Genitive caſe, and pertaining to the former ſyllable:) ſignifying *deſertio*, *dereliſtio*; in the other, *слиhte*, *ſlyhte*, or *ſlite*, betokening, *ruptio*, *violatio*, &c.

^g See Butlers English Grammar, pag. 19, 34, & 35.

As Rent and Service in general was underſtood by *Gavel-man*. *Gable*, *Gavel*, &c. ſimply, and particular rents and ſervices denoted by an application of it to particulars, as in the former compounds, ſo the man, the Tenant that paid the one, and performed the other, was ſutably called of old, as in the 6th. and 22th.

of King *Ina*'s Laws, *gaſolgylda*, more of late, *Gavelman*: whence (for example) that paſſage in an

Gafol-gylða.

^h Accompt-roll of Terring manour in Suffex, *anno 11. Edw. 1. Et de iij. s. vj. d. de incremento redditus de Simone Theodulfi, de una virgata & dimid. cum uno meſſuagio in Salwenton — traditis eidem Simoni hoc anno in ſervitium de Gavelman, quantum Gavelman debet de tanto tenemento.* He was one

^h In Archiv. Archiep. Cant.

of thoſe (I conceive) that in a fore-cited Extent of the ſame manour, are thus differenced and diſtinguiſhed from other ſorts of Villeins: *Villani de Terring qui vocantur Gavelmanni*. By an endorſement upon an old

ⁱ Cuſtumul of Charing manour, I find that Otteford manour had its *Gavelmanni*. And amongſt the then Tenants of Charing manour, and the ſervices charged upon them in that Cuſtumul, I

ⁱ Ubi ſup.

read of ſome there termed in one place *Gavelikendeys*, in another *Gavelmanni*. The term, I conceive, may properly be given and applied to our

Gavelikendeys.

Kentiſh Tenants in *Gavelkynd*.

Mala.

White-rents,
Blanc-ferm.
Black-rents,
Black-maile.

* See Spelm.
Glossary, verb.
Ferma alba.
Coke, Instit.
part 2. 19. and
44.

¹ Skenaus de
verbor. signi-
fic. verbo *Fir-
marius.*

One thing more I have to note, before I leave *Gable, Gavel, &c. viz.* that where it comes into mention (as it often doth, in the *Reddendum* of deeds, or feoffments) with *Mala*, it there properly signifies, and is strictly to be taken for Services or Customes; as on the other side, *Mala*, there as properly betokens Rent, or Ferm, which being chiefly two-fold, was distinguished into White-Rents (*Redditus albi, Blanc ferm*) and Black-Rents, (*Redditus nigri, Black maile* :) that, paid regularly *in pecuniis*, in silver, and therefore called *White*; this, *Black*, because, for the most part paid *in pecude*, or the like, say ^k some: if I might add an expression, I should rather say *in blado*, or, if that be not full enough, *in annona*, comprehending all sorts of provision, wherewith the Lords table was furnished, and himself and family fed. And consequently, where I meet with a Tenant holding *per gablum & malam*, as there were many such of old, and I could instance in some, as in Charing, Monkton, Reculver Broke, and other manours in Kent, I should, if I were to play the Expositour, render it *per servitium & firmam, vel redditum*. The tenure continues to this day in Scotland, whence they ¹ construe *Firmarius* by a *Mail-payer*, a *Mailer*, or *Mailman*. The word (as I conceive) is originally British, coming of their *Mael*, which in the Welsh Vocab. is in Latine rendered *Lucrum, emolumentum, quæstus*, as *Maelio*, the verb, *Lucrari, quæstum facere*. The Saxons used it in the same sense as with the Latines, *vectigal, stipendium*; whence this in the Chronicle of Abbingdon, *anno ML. þær ylcan geapen he pette ealle þa litzmen of male*. Which the Latine Chronicle of *Flor. of Worcester*, and others give thus: 1051.

Rex

Rex Eadwardus absolvit Anglos à gravi vectigali, &c. Hence also thus in the same Chro. *Mlv.* 7 þ rciplið ȝepende to Legeceartne 7 ðæn abiden heopa mæler þe ElƷƷan heom beheƷ. 1. (according to the same Latine Histories) *Classis Algari Comitiss Leogecestram deveŷta, stipendium, quod eis promiserat, ibi expectavit.*

By this time, the Reader is satisfied (I hope) touching the true construction of *Gavel*, *Gafol*, *Gable*, or however else he shall chance to find it written, both as the word is taken simply, and as it is used besides in composition, in each importing *Cens*, i. e. Rent, either in money, provision, or works. And being thus far advanced in the dispatch of our positive Proposition (*what is the true sence of Gavelkynd*) I must now desire the Reader, in the next place to observe and consider with me, that, as there are divers sorts of land to be found, both in this County and elsewhere, by the nature of their Tenure not *Censive*, or *Censual*, nor of the kind to pay or yeild *Gavel* (that is, such Rent, or Rent-service, whether in money, provision, or works, as ariseth from ignoble, base, and plebeian Tenures, in which onely *Gavel* is conversant) to those of whom such lands are holden, those namely holden in *Aldio*, in Frankalmoigne, (or Mortmaine, as called^m also abroad, because yeilding the Lord no profit, as being in a dead hand) in Knights-service, in Frankfce, and the like; so is there also, such as that holden in Socage, or Burgage Tenures, or the like, (though free) which contrariwise is *Censual*, liable to Rent, in some one or more of the kinds premised. To distinguish therefore, if not generally what land is, from what is not, of *Gafol-gilden* nature, or of

Land Censual.
Land not Censual.

^m *Hotoman. de*
verb. Feudal.
in verb. *Manus*
mortua.

ⁿ See *Spelm.*
Glossary, verb.
Feudum scuti-
ferum, & *Feu-*
dum ignobile.

^o *Cowels* Inter-
preter, verb.
Chivalry.

^p *Lamb.* Per-
amb. p. 545.

Terræ censua-
les.

the kind to yeild or pay *Cens*, yet specially to put a difference between (what alone is properly and anciently called ⁿ Fee) Knight-service land and it, under which double head is comprised the generality of our whole Counties lands, answering, as to that dichotomy of Chivalry and Socage-Tenures, whereunto all the land in England in the hands of common persons is ^o referred, so also to that known distinction of their lands in Normandy (from whence, as some ^p surmise, we received our *Gavelkynd*, whereof more hereafter) unto *Fief de Haubert*, and *Fief de Roturier* (that is the Noblemans Fee, and the Husbandman or Ploughmans Fee:) for distinction sake, I say, of Censual or rented land, or Rent-service land, from what, like Fee properly so called, being holden *per liberum servitium armorum*, yeilded no Cens, Rent, or Service, whether in money, provision, or works; the former of the twain was called *Gavelkynd*, that is, (as Mr. *Lambard* rightly in the second of his fore-mentioned conjectures) of the kind, or nature to pay or yeild rent, or land holden, not properly in Fee; but as the Feudists are wont in this case to distinguish *contractu sensuali*, as being letten out with, or under condition, to pay Cens or Rent, or with a reservation of Cens or Rent, like unto those in the charters of the Conquerour, and (his son) *Hen. 1.* the one to Battell, the other to Reading Abbeyes, expresly called *Terræ censuales*, and there opposed to Fee, witnesse this provision occurring in each charter: *Terras censuales nec ad feudum donet, nec milites, nisi in sacra veste Christi faciat, nec de possessionibus Ecclesiæ quisquam teneat aliquid feudaliter absolutum, sed ad censum annuum & servitium Abbati & monachis debitum.* See *Clement Reyners*

Reyners Apostolatus Benedictinor. in Anglia, tract. 2. pag. 137, & 154.

It is no simple word (*Gavelkynd*) but a compound of *Gavel* and *kynd*: the latter syllable whereof (to proceed on to that) cometh and is contracted of the Saxon *ȝecȳnde*, a word frequently occurring in the Saxon Sermon set forth and published by Mr. *Fox* in his *Acts*; and Monuments, and again of late by Mr. *Lisle*, as an Appendix to another Saxon piece, a Treatise of the old and new Testament; in the version or translation of the which word they both concur, rendring it in our modern English *a Nature*. To give an instance or two: *æfter ȝohum ȝecȳnde*, i. e. *after true nature*. *hit is on ȝecȳnde*, i. e. *it is naturally*, and the like. It will peradventure be objected, that Mr. *Lambard*, in his *Perambulation*, pag. 495. meeting with the word several times in the Saxon will of *Byrhtic* of *Mepham*, in this often repeated passage there: *innon þ̅ ȝecȳnde*, alwayes translates it, (after the old Latine version in *Textus Roffensis*) *within that kinred*, and in a marginal note against it, calleth it, *a kynd of gift in taylor*. But, for reply, if I may have leave freely to deliver my sence, that version is not good: for, under favour, *ȝecȳnde* there importeth not (as that Translation would) *kinred*, but rather *kynd*, nature, sort, quality or condition, and consequently *innon þ̅ ȝecȳnde* there, if rightly, is thus (I take it) and not otherwise to be Englished, viz. *in that kind*, or, after that nature, or, upon the same terms, or, with the same condition, having relation (if you mark it) to the tie upon the next precedent legacies, gifts or devises of other land, charged either with alms, or with rent, in way of alms, payable there-
out

Kind (in *Gavelkynd*) what signifying.

^a As doth also Mr. *Wheloc* in his Latine version thereof in his *Bede*, pag. 47¹.

Gecynd misconstrued by Mr. *Lambard*.

out by the Legataries or Devisees, for the Devisor or Testator his souls health. Had it been otherwise, so namely that kinred had been intended in that place, I suppose the Donor or Testators expression would rather have been this: innon þ cýnpine, innon þ mægþe, innon þ cneopýrre, or the like, words more proper (I take it) for such an expression than that of gecinde.

* *Lambard*,
Glossary be-
fore his Ar-
chaion, verb.
Præfectus.

† Whereof
some copied
here, in the
Appendix,
Scriptu. 4a, 6a,
7a, 8a, 9a.

To proceed then, and having thus at length discovered from what roots the denomination of our *Gavelkynd* first sprang, namely, from *Gavel*, and *Gecynde*, let us now put, or couple them together: for whose better conjunction, and smoother pronunciation, former times have filed and pared off the former syllable from the latter word *Ge*, (a preposition much used of our Ancestours, the English Saxons, but for the most part † superfluously :) and left it a bare monosyllable, *kind*, which in the termination of many Adjectives, they used to write and pronounce cunde, as populðcunde, godcunde, eorþcunde, rīþcunde, &c. for secular, divine, &c. By means of which contraction (usual in words of this compound nature, as *Wæpon-getuce*, *Burg-gemote*, *Halig-gemote*, *Scire-gereve*, *Port-gereve*, and such like, are at this day written and pronounced, *Wapentake*, *Burgmote*, *Halimote*, &c.) the words being put together, are read *Gavelkynd*, and accordingly, or with very little variation, constantly written in records, deeds, and other monuments of former times. Thus (for example) in a number of deeds and conveyances, which I have † seen recorded in the Lieger-books of the Cathedral at Canterbury, and St. *Austins* late Abbey there, phrased all of them after this manner: *Tenendum ad* (or *in*) *Gavelikendam*.

Thus

Thus also in the inquisition cited and exhibited by Mr. *Lambard*, in his discourse of the Kentish Customs, at the end of his Perambulation, where the phrase or expression of *tenuit in Gavelkind*, is sundry times obvious. Thus again in an ancient deed of feoffment belonging to Herboldowne Hospital, whereby a parcel of land is given to the poor people there, *in perpetuam eleemosynam, and to Gavelkind*, as the deed is phrased. The gift (by the way) is somewhat more remarkable then ordinary in several respects; wherefore, and the rather because it is but short, I think it not amisse to give it a full recital.

Sciunt presentes & futuri nos filios Wilbaldi, Herlewinum & Eilwardum, heredes suos Thomam & Paganum, concessisse infirmis de Herboldune, unam acram & dimidiam terræ, scil. Langenekre, cum fratre suo Wiberto infirmo in perpetuam eleemosynam, and to Gavelkynd: Reddendo sibi duos denarios in die Sancti Nicolai. Hoc concedunt filie sue Basilia & Hawis.

From the tenour of this deed or conveyance, I collect and conceive; first, that this land was of the nature of what by the Feudists is called *patrimonialis, gentilitia, profectitia, hereditaria*, and that the Donors or Feoffors held it by descent, because their heirs do here concur and consent with them in the act of alienation, according to the ancient common Law of England, whereby a man could not alienate such lands as he had by descent, without the consent of his heir, though it were otherwise in point of purchase, witnesse (besides the authorities in the margin referring to printed books) the follow-

Glanvil, lib. 7. cap. 1. *Cowel*, Instit. lib. 2. cap. 20. num. 7. *Coke*, Instit. part 1. fol. 94. b. See *Bracton*, lib. 5. fol. 407. b.

ing

ing passage in a Charter recorded in a Lieger of the often alleaged Cathedral at Canterbury of certain land (all which the party had) in Southwerk, given to that Church by *Norman le Wautier*, in the year of Christ 1204. which thus speaketh: *Et quia prædicta terra de libero catallo, & proprio perquisito meo fuit, & non de aliqua hereditate parentum meorum, ideo Deum inde & S. Thomam Martyrem, & Sanctos Cantuariensis Ecclesiæ, & conventum monachorum ejusdem, heredem^u meum legitimum inscribo, & hac mea carta in perpetuum constituo.* To which many more such like might easily be added from the same *Promptuarium*. The Feudists in this case distinguish between *Feudum novum & antiquum*, as may be seen in *Vulteius, de Feudis, lib. 1. cap. 10. num. 72.* In the next place, the Reader may please to observe with me, that as ^{*}*Britton* distinguisheth of a double tenure in Mortmaine, the one called *Almoigne*, or *Aumone*, simply, the other *Frankalmoigne*, describing the former to be a gift in alms, but not free alms, because (saith he) a certain service is retained or reserved to the Feoffor, cap. 66. fol. 164. b. so this in hand is no alienation in Frankalmoigne: the Feoffers (it seems) not intending to give the land in that absolute manner, but, in token of Seigniorie, to reserve something of service to themselves, phrase their gift, not *in puram eleemosynam*, or *in liberam eleemosynam*, (one of which words, viz. either *pura* or *libera*, is (some say, others say^y both) essential to the making it a tenure in Frankalmoigne, and to the excusing it from service) with which the next following words (*and to Gavelkynd*) could not have consisted; pure alms, or Frankalmoigne, excluding the return of all but divine services and burthens;

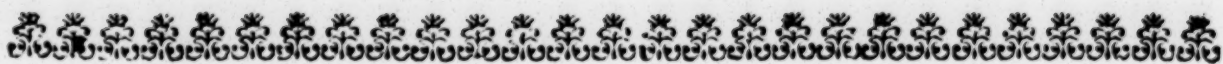
^u This seems to thwart *Glanvil. lib. 7. c. 1. fol. 46. a. Potest itaque quilibet, &c. and Bracton, fol. 62. b.*

^{*} Cap. 66. fol. 164. b.

^y *Bracton, l. 2. c. 10. fol. 27. b. Coke, Instit. part 1. fol. 94. b.*

thens; they phrase it not therefore, I say, *in puram*, or *liberam eleemosynam* but onely *in perpetuam eleemosynam*, and to *Gavelkynd*; by the former of these words, investing the Hospital with an estate in perpetuity; by the latter, and the *Reddendo* following, saving and reserving to themselves a quit-rent, as it were, *in signum dominii*; that is, they reserved to themselves the service, and granted to the Hospital the *usum fructum*: or they granted the *utile dominium* to the Hospital, and reserved the *directum* to themselves. So that whereas *Bracton* and ² others make mention of a tenure *in feodo quoad servitia, & non in dominico*, referring to the chief Lord; and of another *in feodo & dominico, & non in servitio*, relating to the Free-holder, the former may here be referred to the Feoffors, the latter to the Feoffees in this deed. But this *Parergon*. And now to wind up all (concerning this first Proposition) and not to enlarge with any further instances (wherein I might be infinite) for asserting this truth of our *Gavelkynds* derivation: *Gavelkynd*, we see, is the lands right name, whose Etymologie was never wrested to *Gife-eal-cyn*, whose signification of Censual, Rented, land, or Rent-service land, was never questioned till that within our fathers memories, one and all, by a kind of errour, *jure veluti successionis*, transmitted to them, run a head in a wrong and mistaken derivation.

² Lib. i. c. 19, fol. 46. b. Item l. 4. fol. 263. b. Coke, Instit. part 1. fol. 1. b. verb. *Feesimple*. *Fleta*, lib. 5. c. 5. parag. 26.



PROPOSITION II.

The Nature of Gavelkynd-land in point of Partition.

Ifollowing then *Gavelkynd* (as to the name of it) to be derivative from Partition, our next enquiry shall be, if (on the contrary) Partition ow it self to *Gavelkynd*, or to what other cause. Before I further enter into which research, or offer any resolution to the *Quære*, give me leave to preface it with certain rules, grounds and principles, in this case fit to be premised. You are then desired to take notice, that here in England, we acknowledge no land (no inheritance) partible or divisible, but what is so either (first) by Law, as in the case of Females, succeeding for lack of Males, whether in Knight-service land or Socage, which in this point differ not, or what (secondly) is so by Custome, as in our present case of *Gavelkynd*, and such like? no parceners of land (I say) in point of inheritance or succession, but either according to the course of the Common Law, or by Custome, as termed by *Littleton*, and our more modern books, the same in effect with what of elder time, in *Bractons*^a language, are called, 1 *Ratione personarum*, 2 *Ratione rei vel terræ*. In the next place, let me adjoyn what in this point of Partition is delivered by those two ancient and famous Sages of our Law, *Glanvill* and *Bracton*, whereof the former^b speaketh thus: *Cum quis ergo hereditatem habens*

Partible land,
and Parceners
two-fold.

^aFol.278,374,
428.

^bLib. 7. cap.3.

*habens moriatur, si unicum filium heredem habuerit, indistinctè verum est, quod filius ille patri suo succedit in toto. Si plures reliquerit filios, tunc distinguitur utrum ille fuerit miles, sive per feodum militare tenens, aut liber Sokemannus: quia si miles fuerit vel per militiam tenens, secundum jus regni Angliæ primogenitus filius patri succedit in totum, ita quod nullus fratrum suorum partem inde de jure petere potest. Si verò fuerit liber Sokemannus, tunc quidem dividetur hereditas inter omnes filios quotquot sunt per partes æquales, c si fuerit Socagium, & id antiquitus divisum: salvo tamen capitali messuagio primogenito filio pro dignitate æsneciae suæ; ita tamen quod in aliis rebus satisfaciet aliis ad valentiam. Si vero non fuerit antiquitus divisum, tunc primogenitus, secundum quorundam consuetudinem, totam hereditatem obtinebit; secundum autem quorundam consuetudinem, postnatus filius heres est. Item si filiam tantum unam reliquerit quis heredem, tunc id obtinet indistinctè quod de filio dictum est. Sin autem plures filias, tunc quidem indistinctè inter ipsas dividetur hereditas, sive fuerit Miles, sive Sokemannus pater earum, salvo tamen primogenitæ filiae capitali messuagio sub formâ præscripta, &c. Thus Glanvill, harmoniously followed, and almost verbatim of ^d Bracton, whose words on this argument are these: *Si liber Sockmannus moriatur pluribus relictis hæredibus, & participibus, si hæreditas participabilis sit & ab antiquo divisa, hæredes (quotquot erunt) habeant partes suas æquales, & si unicum fuerit messuagium, illud integre remaneat primogenito, ita tamen quod alii habeant ad valentiam de communi. Si autem non fuerit hereditas divisa ab antiquo, tunc tota remaneat primogenito. Si autem fuerit Socka-**

^c The Scottish reading is, *si fuerit Socagium illud antiquitus divisum.* See Reg. Majest. lib. 2. c. 27.

^d Lib. 2. c. 34. fol. 76. a. Vid. Flet. l. 5. c. 9. Parag. 15.

gium villanum, tunc consuetudo loci erit observanda. Est enim consuetudo in quibusdam partibus, quod post natus præfertur primogenito, & è contrario, &c. Hereunto let me subjoyn in the third and last place, that common principle amongst us, and obvious in our books, *viz.* that prescription in *Gavelkynd*-land, as it is not^e needful, so neither is it good. The reason is, whereof I pray take notice with me, that (as Mr. *Lambard* hath it) the custom of *Gavelkynd* is general, spreading it self throughout the whole Shire, into all lands subject by ancient Tenure unto the same, such places onely excepted, where it is altered by Act of Parliament, and therefore 5. *Edw.* 4. 8. and 14. *Hen.* 4. 8. it is said, that the Custome of *Gavelkynd* is (as it were) a Common Law in Kent.

^e *Lamb.* Per-
amb. pag. 538.
Coke, upon
Little. Sect. 265.

Having thus premised, I shall now make it my endeavour to shape such a resolution or answer to the propounded *Quære*, as may consist with these principles. And briefly, my answer here is negative, *viz.* that Partition doth not owe it self barely to *Gavelkynd*, either *ex vi termini*, by reason or force of that denomination, or *ratione rei*, from the nature or condition of the land; that property alone of the lands being *Gavelkynd*, or so called, not sufficing to render it partible. First, as for the name, the term, that that will in no wise bear it, is (I conceive) a thing sufficiently cleared in our Discourse upon the first Proposition, wherein the term is vindicated from that mistaken construction, by the error of latter times obtruded on it, nor can such a derivation any way consist with the premised principles, Partition in *Gavelkynd*-land, from the term or denomination of it, being reducible to none of the there assigned causes of Partition. As
incon-

inconsistent also with those causes and grounds of partition (that dichotomy or bipartite distinction of partible land into, 1 that by Law, and 2 that by Custome) is the attributing that property of partition in *Gavelkynd*, to the nature or condition of the land, there being no mention of any such third sort of partible land to be found in our Books. If it be replied, Yes surely; for *Bracton* is expresse for a partition *ratione rei vel terræ*, in the places above quoted, that especially where he saith (as fol. 374. a.) *sicut de Gavelkynd, vel alibi ubi terra partibilis est ratione terræ*. Such indeed are his words, and withal 'tis not to be denied, that such is the nature and condition of *Gavelkynd*-land, being not onely subject and liable to what the Civilians in their phrase are wont to call, *Judicium*, or *Actio familiæ herciscundæ*; *De communi* ^f *dividundo*, the Feudists, *Adæquatio*, *Paragium*, we in our language term it *Coparcenary Land-shifting*, and the like; but withall so subject to it, as that partition doth alwayes accompany land of that nature, and is indeed as inseparable from it as the contrary from Knight-service land. Whence then is it? Before I answer, observe first with me for an answer to these passages in *Bracton*, that as before each of them, in one place, we have his *si hæreditas partibilis sit, & ab antiquo divisa*, so likewise after them, in another place, his *tenementum partibile inter plures coheredes — & semper solet dividi ab antiquo*. Whereby (conferring place with place, for reconciling *Bracton* to himself) we may plainly understand what is meant by those two mesne or intervening passages in *Bracton*, namely, that not the bare nature of the land, but ancient customes joynt concurrence

Objection.

Solution.

^f See *Fulberts* Dialog. part 2: cap. 6. Of *Parceners*.

^g Fol. 76. a.

^h Fol. 428. a. quem sequitur *Fleta*, lib. 6. c. 48. parag. 2.

currence with it, is intended, and of him implied in each place, though not expressed, to render the land or inheritance partible. The like help, under favour, must be allowed *Glanvill*, to reconcile his, *Sciendum autem quod si quis liberum habens Socagium plures habuerit filios qui omnes ad hereditatem equaliter pro equalibus proportionibus sunt admit- tendi*, lib. 7. cap. 1. fol. 46. a. to his, *Si vero fuerit liber Sokemannus, tunc quidem dividetur hereditas inter omnes filios, quotquot sunt per partes equales, si fuerit Socagium & id antiquitus divisum*, eod. lib. cap. 3. fol. 49. a. Briefly, were it so that *Gavelkind*-land were partible by vertue either of the name or nature of it, without accession and concurrence of Custome, then all lands as soon as granted out in *Gavelkynd*, whereof examples are obvious, and till the ⁱ Statute of *Quia emptores terrarum*, frequent, were *ipso facto*, partible, contrary to that common and received ground, whereof before, that none are such, i. e. partible with us, (except that descending for want of males to females) but what are so by custome. As then not to the name, so neither to the nature of *Gavelkynd*-land alone, is such partition owing.

ⁱ Anno 18.
Edw. 1.

And is it then to Custome or Prescription? For the latter, 'tis clearly repugnant to what is before laid down by way of grounds or principles, it being a known rule in our Law, and obvious in our books, that Prescription in our Kentish *Gavelkynd*, as it is not wanted, so neither is it admitted to come in plea. What say we then to Custome? Surely, since neither to the name or nature of the land, nor to Prescription, nor yet (neither) to the Common Law so diametrically opposite to it; to that,

that, I mean to Custome, it is, or I know not else to what, that this partition mainly owes it self. Agreeable whereto is that of ^k Mr. *Lambard*, where ^k *Perambul.* he saith, that *no Gavelkynd partition could be chal-* ^{fol. 544.} *lenged, but onely where the custome of division had prevailed, and that, Gavelkynd was not tried by the manner of the Socage services, but onely by the touch of some former partition.* But if so, then an objection here meets us resolved into a question thus, What shall then be said to *Gavelkynd*-land of novel Tenure, upon the grant of lands, till then happily holden in Demesne, to one or more persons in *Gavelkynd*, as was usual before that Statute of *Quia emptores terrarum*, and until when a man might create in his land what Tenure he pleased, granting out (as ¹ *Bracton* hath it) in Socage, what ¹ *Fol. 36. a.* he held in Knight-service, and *è converso*? what, I ^{and fol. 48. a.} say, shall we resolve concerning the point of partition here? since no particular custome or usage of partition had ever took place, to give to such division either foundation or precedent. We are here (me thinks) threatned with a Dilemma: for either ^{Dilemma.} the land was not partible, and why then called *Gavelkynd*? or, if partible, yet not by custome, being but newly turn'd from some other Tenure into *Gavelkynd*, and wanting both Time and (the daughter of it) Usage, (the ^m essentials of a custome) to ^m *Coke, Instit.* render it partible that way. Here then is work for ^{part 1. fol.} an *Oedipus*, but the resolution of the main doubt, ^{110. b. and} to which I will now more closely apply my stile, ^{fol. 113. b.} will at once clear both.

Truth is then, that 'tis neither from Custome alone, nor yet from the nature of *Gavelkynd*-land alone, that this partition springs, but partly from
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the one, partly from the other, and so from both together. It must be granted that *Gavelkynd*-land, *ex sui naturâ*, is partible thus far, and in this sence, that by an inherent quality, it is capable of partition by Custome; that indeed may and doth render it partible, as Knight-service land properly it cannot, by reason of a repugnancie thereto in the nature thereof: but in this respect it differs not from Socage land in general, which by the nature of it, is capable of partition, and by Custome may be, and in many places *extra Cantium* is partible, where the plea (I take it) ought to run, *quod terra illa à toto tempore, &c. partibilis fuit, & partita* agreeable with that of *Glanvill*, *si fuerit Socagium, & id antiquitus divisum*, which *Bracton* seemeth somewhat more fully to explain by his, *si hæreditas partibilis sit, & ab antiquo divisa*. Now then, *reddendo singula singulis*, that such land is *partibilis*, i. e. partible, (the former part of plea) is, in Kent, from *Gavelkynd*, elsewhere, (in particular manours at least) from Socage; that it is, or rather was *antiquitus, partita*, i. e. anciently parted (the pleas latter part) is from Custome or Prescription: Partition in the mean while in our *Gavelkynd*, being but a single property or branch thereof induced by Custome; the term in its full latitude comprehending all other properties accompanying land of that nature and tenure, such as *Dower of the moyety, Suffering for felony without forfeiture of estate*, and the rest contained in the Kentish Custumal, as properly depending of *Gavelkynd* as partition doth, and in respect whereof the land may as well be called *Gavelkynd*, as because of Partition.

But

But admitting Socage-land to be generally, by the nature of it, *consuetudine mediante*, capable of partition, as well as *Gavelkynd*, how comes it then to passe (will some say) that this partition-property is more appropriate to it than Socage-land in general, and that they so much differ in their terms? From the agreement of the Kentish-men with the Conquerour, saith the common opinion. I shall answer that anon. In the mean time, said we not but now, that Custome is the thing whereto we ow this partition? And if so, why then seek we any further after its original? Customes, we know, cease to be Customes, when once they can be traced to their first beginnings, it being the main essential part of a Custome to be of an unknown rise. But be it so, that Custome carries such a stroke here, what kind of Custome is it, or how shall we find such a Custome for it, as may consist with *Gavelkynd*-land of novel Tenure, whereof before so often? *Hic labor, hoc opus est*, here's the point indeed. Why, in short it is no other than a custome generally spreading it self throughout the whole Countrey in land of that nature. What elsewhere, I mean in other Shires and Counties, they properly call by the name of Socage, whether free or base, we here in Kent are wont to call by the name of *Gavelkynd*: or if you please (inⁿ Mr. *Lambards* expression) all Socage-service here properly so called, is clothed with the apparel of *Gavelkynd*, and under it, in a large acception, is understood all such land within the County, as is not Knights-fee, or Knights-service land, the term serving here, as that of Socage elsewhere, to contradistinguish it from Knight-service land, as *Fief Roturier*, or rather Inheritance Roturier (all other

Objection.

Objection.

Solution.

ⁿ Peramb. p. 545.

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being

• *Hotom. de*
Feud. l. 2. tit.
52. parag. 1.
Item Disput.
c. 5. Spelm.
Gloss. in Feud.
scutifero, p.
260.

• *Peramb. pag.*
536.

• *Scriptu. 1, 2,*
3.

being improperly and corruptly called *Fief*, or *Fee*, that is not holden *militiæ gratiâ*, the ground of all • Fees) is used in Normandy to difference that from *Fief de Haubert*, or *Noble Fief*. Now into all land of this kind, by a general or universal custome of the whole County, hath this property of partition been introduced; insomuch, as what land was granted out in *Gavelkynd*, by such as before held it in Demesne or the like; as, for want of time and usage, it had no particular custome introductive of that property of partition, so neither did it want the same, the generality of the Custome extending it self to all Censual land, or land letten out for Cens, and sufficing to render it partible, as occasion should be offered, though but newly dimised. To this purpose p Mr. *Lambard*: *Although* (saith he) *it were so that the land were never departed in deed, yet if it remain partible in nature, it may be departed whensoever occasion shall be ministred.* Granted out, I say, and holden in terms for Cens, conceiving a necessity of that or the like expression in the *Habendum*, or other part of the grant, to make it capable of this and the other properties incident to *Gavelkynd*, not intending here the very numerical word or term (*Gavelkynd*) but that or some other of equivalent sence and signification with it, for example, *Reddendo* such or such a sum *de gablo, de censu*, and the like (whereof, for illustration sake, expect some copies of old grants in the 9 Appendix to this Discourse.) These indeed, and such as these, were the more usual expressions in elder grants, that of *Tenendum in Gavelkynd*, and the like, being sought of me in vain before *H. 2.* dayes, nor afore-time doth the term occur in any writing or monument whatsoever,

foever, save onely in this passage in *Spot* (St. *Austins* Monk and Chronicler at Canterbury) who saith, that *anno* 1063. (Abbas) *tradidit terram de Dene in Gavelkende Blakemanno & Athelredo filiis Brithmeri*. But from *Hen. 2.* dayes downwards, it is obvious in many grants of land recorded and extant in the Liegers of Christ-church Canterbury, the late Abbey of St. *Austins* there, and many other of the Kentish religious houses, until about the time of that ^r Statute, *Quia emptores terrarum*, which forbidding the letting out of land by any man to be holden of himself, and consequently cutting off all new Tenures, and the creation thereof, stopped the current of all such grants of land in *Gavelkynd* for the future.

^r Anno 18.
Edw. 1.

That such an expression, as *Tenendum in* (or *ad*) *Gavelkynd*, or the like, was necessary to render the granted land partible, after the custome of *Gavelkynd*, without the help of Prescription requisite in partible land elsewhere out of Kent, may in part appear by a Record of a controversie happening now full 400 years ago, between one *Burga*, sometime the wife of *Peter de Bending* Plaintiffe, and the Prior and Covent of Christ-Church Canterbury, Deforciant or Defendant, touching the moiety of the manor of Well, by them granted to her said husband *ad feodi firmam*, challenged by her ^r *tanquam francus bancus suus*, which controversie was debated and decided in Eire, and is recorded in the Liegers of that Church, from whence I shall present the Reader with a copy of it, not unworthy his perusal in the fore-remembred Appendix, Scriptura 5. Nevertheless, it will here I think be necessary, that we distinguish times: for what at first in Kent was only partible, because of the Tenure in *Gavelkynd*, I per-

^r See *Bracton*, lib. 4. tract. 6. c. 13. which laid to chap. 15. eod. tract. the instance there seemeth to be a Kentish case concerning a widow of *Graveney* (anciently written *Gravenel*) by *Feverham*.

Peramb. pag.
538.

Anno 18.
Edw. 1.

swade my self was afterwards, in tract of time, partible, and did communicate with *Gavelkynd*-land in that property, by being Socage land, though not expressly holden in *Gavelkynd*, it sufficing at length to shew (as Mr. *Lambard* hath it) the Custome at large, and to say, *that the land lieth in Kent, and that all the lands there be of the nature of Gavelkynd.* By what means this was wrought, or by what degrees our Socage land arrived at this universality of partibleness, is not so easily discovered. That the sundry favours of *Gavelkynd* custome should intice many to creep into it, and by one and one (upon occasion of the intestine troubles that ensued the deprivation of King *Richard* the second) to shroud and cover themselves under the safety and shadow of the priviledges that do wait upon it, is an opinion of some, whereunto I cannot subscribe, as conceiving no Tenures in *Gavelkynd* to be so late as *Rich.* 2. dayes, which this opinion would infer, with what consistencie with the Statute of *Quia emptores terrarum*, made so long before, and prohibiting the creation of new Tenures, I cannot see. But to let the manner passe, the thing (the over-spreading the Countrey in proceesse of time with this Tenure) is very obvious and apparent, witnesse an ancient Statute (made anno 18. *Hen.* 6. cap. 2.) taking knowledge, that *There were not at that day within the Shire above xl. persons, which had lands to the yearly value of xx. pounds, without the Tenure of Gavelkynde; and the greater part of this County, or well nigh all, was then within this Tenure.*

To proceed, ascribing this property of partition in *Gavelkynd*-land to the custome of the Countrey, what shall be said then to the partible land (more or lesse)

lesse) abroad in other Counties? is such *Gavelkynd*-land, and so to be called, or not? or is it from *Gavelkynd* that such partition there obtains? I conceive not. For first, our Kentish *Gavelkynd* Custome, considered collectively, with respect to all its branches, is not to be restrained to this one particular property, but (as before is intimated) consists of many other as singular properties besides, and which may as well challenge a share and right in the Customes name, as may that of Partition, such as is *Dower of the Moyety, not to forfeit lands for Felony*, and the like; and though in point of partition it may be like ours in Kent, yet in other properties incident to our *Gavelkynd*, it might, and no doubt but doth differ from it. Besides, that such partible land elsewhere should be called *Gavelkynd*, will not stand with our premised grounds, excluding Prescription in *Gavelkynd*-land, whereas in such places abroad, though haply not in whole Counties, yet in particular Manours, I conceive it's necessary, even in their *Gavel-londs*, whereof I find mention made in several manours out of Kent, as some in Kent, to shew, *quod terra illa à toto tempore, &c. partibilis fuit & partita*, the accustomable actual partition of it being there as necessary to be pleaded and proved, as its capability of such a property. Add hereunto, that if all partible land were *Gavelkynd* (rendred such by partition alone) then were **Bractons, Sicut* * Fol. 374. 2. *de Gavelkynd vel alibi ubi terra est partibilis ratione terræ*, an improper expression. We are told that this Custome of *Gavelkynd*-partition takes place, (hath done at least) in other countries, or counties besides Kent, and *Littleton* instanceth in North-Wales. But what custome, I pray? a custome indeed,

¹ *Skenai* Annot. in Reg. Majest. lib. 2. cap. 21, & 27.

² See 21. *Edw.* 1. 34. *Hen.* 8. 26. & *Girald.* *Cambrenf.* Itinerar. Camb. lib. 1. cap. 7. By the way, how do our Britains claim descent from the Trojans? sith with them the eldest son, by prerogative of primogeniture, monopolized the whole inheritance.

Whereof see Mr. *Seld.* Jan. Angl. lib. 1. pag. 24. *Vit. Ba-*
sinstoch. Hist. lib. 3. pag. 207.
^a *Rover.* Illust. trat. Hist. Monast. S. Jo. Reomnen. p. 618. num. 168.

deed, like to that in the Scottish & Socage land, of partition; that's true, and testimonies of it are obvious, such as, besides that of *Littleton*, *Statutum Walliæ*, the Welch History, and some Acts of ² Parliament. But still, I say, no *Gavelkynd*-custome, taken in its true, plenary and compleat acception, comprising all the properties of it obvious in the Custumal. As then for other Countrey-mens communicating with us of Kent in the Tenure, I conceive it first came up, by way of imitation of our example, in Ireland especially, and amongst the Welch-men, in whose Vocabulary or Dictionary the word is sought in vain, as it is also in that old Statute which concerns them, (*Statutum Walliæ*) where though mention may be found of a custome there obtaining of partition of their lands, like to that of our Kentish *Gavelkynd*, yet without any one word of *Gavelkynd*. And if perhaps it may be found in their deeds, charters, or other records, yet (as one ^a saith in a case not much unlike conditioned to this of ours, whose words with very little variation I shall therefore take up here:) *Susplicari licet hanc vocem pluribus illorum chartis actisque publicis, non tam illorum quàm pragmaticorum usu ac instituto in-*
vectam. i. e. 'tis to be suspected that it had its imposition, and was first transmitted hither by our Lawyers, who borrowed the term to make use of it for illustration sake, like as of late (I am perswaded) the Parliament did in that Stat. 34. *Hen.* 8. cap. 26. where the term of *Gavelkynd* haply is but borrowed, to help describe and illustrate that partible quality there mentioned of the lands in Wales, which I am the more induced to conceive, because in a former Statute concerning Wales, namely that

of the 27th of the same King, cap. 26. making mention of this partition, *Gavelkynd* is not at all remembred. In imitation then (as I conceive) of the Kentish-men, the generality of whose partible land of long time hath notoriously been known by that title, and whose lands alone of all the Counties of England at this day be of the nature of *Gavelkynd* of common^b right, this name or term of *Gavelkynd* in lands elsewhere of like condition in matter of descent, hath been taken up and is retained.

^b Coke, Instit. part 1. fol. 140.
^a

By that which hath been said, I may be thought to incline to their opinion, who hold that *Socage* and *Gavelkynd* are Synonyma, terms identical, and of one and the same signification here in Kent, and that consequently what land here is of *Gavelkynd*-nature, is of *Socage*-tenure; as on the other side, what land is of *Socage*-tenure is of *Gavelkynd*-nature. I answer, No: for I require in this case, I mean to make *Socage* land here in Kent *ipso facto* partible, after the custome of *Gavelkynd*, that it be granted out and holden in *Gavelkynd*^c expressly, or in terms equivalent, as I said before, yet with that distinction of times wherewith I there qualified it. Notwithstanding, I am not of their mind, who distinguishing between free and base *Socage* in Kent, make the natures of their descents divers; the free *Socage* (say they) descending to the eldest alone, the base falling in division between him and all his brethren. Thus^d Mr. *Lambard* in the person of others; to help justifie whose distinction, with the inference upon it, he there exhibits an Inquisition taken after the death of one *Walter Culpepper*, making mention of divers parcels of land and annual

Objection.

Solution.

^c As in the Appendix, Scriptu. 4, 6, 7, 8, 9.

^d Peramb. pag. 593.

nual

* In which respect *Free Socage* is not likely to be here intended, since *Glanvill* never mentions *Free Socage*, but under the notion of partible land, as l. 7. c. 1. and l. 13. c. 11.

Liberum feodum.

† In Archiv. Archiep. Cant.

‡ Lib. 5. fol. 329. a.

nual rents holden by the deceased at his death, some in *liberum feodum*, others in *Gavelkynd*; the former of which, by the verdict of the Jury, was to go to the deceaseds eldest son^e alone; the latter, in common amongst him and the rest of his brethren. Thus the Inquisition, which (as Mr. *Lambard* there follows it) cleerly distinguisheth free Socage from the *Gavelkynd*, interpreting, it seems, *liberum feodum* there by Free Socage, and it may be rightly; however I crave leave of dissent, and (as it is but fit) shall give my reasons: For my part, I never found Free Socage any where expressed by that term, or in Latine rendred *Liberum feodum*, nor perhaps to those of more diligence, and more conversant with our Law-records than my self, hath it ever occurred under that notion. Nor have I met with any Free Socage, as this here, not subject to the rendring of some kind of service, either in *denariis*, or otherwise. By *Liberum feodum*, I understand sometime *Feodum militare*, which is often in old Records called *Liberum feodum*. In a very ancient^f Rental of Southmalling manour in Suffex, we have this title: *Liberi feodi*, and under it: *Godefridus Walensis tenet III feodos milit. in tenemento de Malling, & quartam partem unius feodi apud Terring per liberum servitium armorum suorum. Will^{mus} de Bransa tenuit apud Adburton unum feodum militis, per liberum servitium armorum suorum.* And so some others. Apposite here is that of § *Bracton*: *Notandum* (saith he) *quod in servitio militari non dicitur per liberum servitium, & ideo quia constat, quod feodum tale liberum est, &c.* Sometime also by *Liberum feodum*, I understand (what I conceive it doth principally denote unto us) *Frank Fee*, that is, by the

the Feudists definition, such *pro quo nullum omnino servitium^h præstatur*, and therefore is of them reckoned *inter Feudastra*, or *Feuda impropria*. And such as this seemeth to be meant by *Liberum feudum* in that Inquisition, because it is there *in terminis* expressed to be holden (just after the manner of Frank Fee, by the precedent definition of it) *absque aliquo servitio inde faciendo*. And if Frank Fee, then in probability not Socage: for as all the land in the Realm (say our Books) is either *Ancient Demesne*, or *Frank Fee*, so none (say they) is to be accounted Ancient Demesne, but such as is holden inⁱ Socage. Frank Fee then being opposed to Ancient Demesne, which is Socage, cannot it self be Socage. Nor will *Bractons* distinction of Socage into *liberum* and *villanum*, applied to that difference in Mr. *Lambard*, of free and base Socage, by which the one should consist of money, and the other of base services, be warranted (as himself there observes) from the ensuing Inquisition, some lands being therein denoted to be of *Gavelkynd*-nature, which neverthelesse do yeild none other but money alone, and none there of that nature charged with works, besides that of Suit of Court, improperly called Works, as not coming under the notion either of *Manuopera*, or *Carropera*, to which double head all works of this kind are wont to be referred.

^h *Vultius de Feudis*, lib. 1. cap. 8. pag. 353.

ⁱ *Cowell Interpreter*, verb. *Ancient Demesne*, from *Fitzherbert*.

Hence let none perswade themselves, that *Gavelkynd*-land was not, or by its nature is not liable to Works: for albeit that 66. of King *Ina's* Laws in the Archaion, seemeth to counter-distinguish *Gafol*, and *Werk*; and though moreover *Gafolland* and *Werkland* occur in some manours out of Kent, as

Gafolland.

Werkland.

* —*terram trium aratorum, quam Cantiani Anglicè dicunt thrée Swolinges.* &c. as in the Charter of K. Offa, in the Antiquities of Canterbury, p. 211.

† See *Spelmans Glossary*, verbo *Lazzi*.

of a distinct and different nature, (yet both *servile*, and opposed to what there is called *terra libera*, denoting, I suppose, Free Socage) yet most certain it is, that both *Gablum* and *Opera* do often meet, and are found in *Gavelkynd*-land. Witnesse the old Custumal of Monkton manour in Thanet, belonging to the Church of Canterbury, mentioning the particulars of what servile works the Tenants there stood charged with for the 18 Swolings (so many plough-lands, I take ^k it) holden of the Monks in *Gavelkynd*. Witnesse also this passage in King *Johns* Charter made to *Hubert* the Archbishop, for the changing *Gavelkynd*-land into Knights-Fee, at large exemplified by Mr. *Lambard*, Peramb. pag. 531. *Xenia, Averagia, & alia opera quæ fiebant de terris iisdem convertantur in redditum denariorum æquivalentem.* Witnesse in the third and last place (not to multiply instances in a case so cleer) an Inquisition found after the death of *Isabella de monte alto*, widow, sometime of Orpington, recorded in a Lieger of that Cathedral, whereof expect a copy in the Appendix, Scriptura 10. 'Tis true indeed at this day, and time out of mind (haply from *Richard* the seconds¹ time) such servile works (properly called Villein-services) have been, as they still are, intermitted, or rather quite ceased; insomuch as all our *Gavelkynd*-land, in point of service, now differs nothing from Free Socage, as it stands described and defined of *Bracton*; being such *ubi fit servitium in denariis*, (to use his own words) all the Tenants burthen, his whole service, being onely *servitium crumenæ*, pecuniary, such as payment of money for rent, suit of Court, and such like; nay, in many grants of land in *Gavelkynd* that I have seen, I find

no

no tie at all upon the Tenant, no covenant or contract between his Lord and him, to require of him any such base services, there being *ut communiter*, and regularly, a reservation onely of rent in money, suit to his Court, or the like: yet I must tell you (as a reason hereof, in my judgement) that, though *Gavelkynd*, in the genuine sence, sound land letten for *gable*, *cens*, or *rent*, consisting chiefly in *denariis*, (whence in an old ^m Custumal of Eastry manour in Kent, I read: *In eodem manerio mutati sunt octo Cotarii pro Gavelkende. Medleferm tenet unum messuagium, tres acras, quæ solent esse Cotar. modo reddit xl. d. de gablo*, and so divers more, which haply will be better understood, if I add what occurs in an old Accompt-roll of the Archbishops manours for the year 1230. in Charing Bailives receipt: *Et de xij. s. iiij. d. de fine Cotariorum, ut Coteriæ suæ ponerentur ad redditum* :) yet commonly upon such grants in *Gavelkynd*, the Tenant parted with such a sum of money to his Lord, *in gersu-* mam, i. e. in consideration of that grant, and by way of Fine, as may seem equivalent to the base services otherwise imposable and to have been charged upon that land, and upon the Tenant in respect thereof; or if not, probably, (as in *Gavelkynd*-land, by vertue of King *Johns* fore-mentioned Charter, turned into Knights-fee) he had his rent enhanced and augmented to an equivalent value of his services to be redeemed; the cause in chief of the excuse of *Gavelkynd*-men from base services of latter times, and at this day, being (I conceive) no other than the Tenants buying them out, and consequently the change of the same (as *Littleton* hath it of Socage in general) into money, by the mutual consent of

^m In Archiv.
Eccles. Cant.

Gersuma;

Lord and Tenant, whereof expect some examples to be presented in the Appendix, Scriptur. 11, and 12. In the mean time have here an instance or two taken from some old Accompt-rolls of the Archbishops manours of this and that summe paid and received for enfranchising the land from customes and services, and changing it into Knights-fee, whereof in the last-remembred Accompt-roll, and in the receipt of Cerring (now called Charing) manour there: *Et de ijs. ix. d. ob. de incremento redditus Thomæ de Bernfeuld de termino Sancti Johannis, ut terra sua de cætero sit libera de consuetudinibus per feodum militis. Et de xiiij. d. quad. de incremento redditus Thomæ de Bending, ut terra sua sit libera per feodum militis, de termino S. Johannis.* And so some others there, as also in Maidstone and other Archiepiscopal manours, and such may well be reckoned among lands of that sort, which in a copy of the book of Aid, cited by ^a Mr. *Lambard*, are noted to be holden in Knights-service, *per novam licentiam Archiepiscopi.* But to return to our *Gavelkynd*, which if not extensive to Free Socage, they may seem to stand in need at this day of some other character (to keep them unconfounded) than *Brañton* in the definition and description of the latter doth propose, in regard the service of both equally consisteth in money.

^a Peramb. pag.
533.

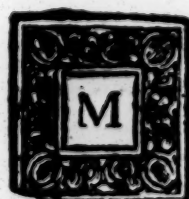
To recapitulate now what hath been delivered concerning partition in Kentish *Gavelkynd*-land: It is (as hath been shewed) neither from the name, nor from the nature of the land alone, nor from prescription, nor yet from any particular custome, that this property there proceedeth; but partly from the nature of the land, and partly from custome, not (I say)

say) a particular one, but a general custome extended throughout the whole County in censual land, or land letten for Cens, or (what is all one with it) *Gavel*, or *Gafol*, to say, holden in *Fief* (or Inheritance) *Roturier*, as called in Normandy, and other parts of France; the Antiquity whereof, and how beginning in Kent, and why more general there than elsewhere, shall be the argument of our next Discourse.



PROPOSITION III.

The Antiquity of Gavelkynd-custome, (in point especially of Partition) and why more general in Kent than elsewhere.



After *Lambard* ° inclines in his opinion to ° Peramb. conceive this custome brought hither out of pag. 545. Normandy by *Odo* (Earl of Kent, and bastard brother to King *William* the Conquerour) and that we received it thence by his delivery; an opinion inconsistent with the Custumal it self of his own Edition, the very close whereof (if it may be credited) layeth challenge to the custome before the Conquest. For my part I conceive it may carry an Antiquity far greater than the time of the Norman conquest, being probably as old (in the name I mean, I will not say in all the properties of it, though happily I may in point of Partition) as *Gafolland* it self, from which (if considered in the

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term)

^p Spot, in the lives of the Abbats of S. Augustine at Canterbury, cited by Mr. Lambard, both in his Glossary before his Archaion, verb. *Terra ex scripto*, and in his Perambul. pag. 28.

To discover an old error as acceptable, as to deliver a new truth.

term) it as little differs in sence as in syllables; to what our Saxon Ancestours called *Gafolland*, their Successours, and we at this day (for a fuller expression of the nature of it) having added one syllable, and so calling it *Gavelkynd-land*. Yet I would not be thought of his ^p opinion, who would bear the world in hand, that the Commons of Kent continue their priviledges by means of a composition entred with the Conquerour at Swanscomb. No, under favour, we ow them not to that, or any other such like specious stratagem, nor are beholding either to *Stigand* the Archbishop, or *Egelsine* the Abbats policie to contrive, or to their and our Countrey-mens valour to compasse, their continuance for us in such a way. I am not so prodigal of my historical faith, as to cast or squander it away upon commentitious fables: for I account this no better, however swallowed of the vulgar, whom I dare not to encounter in any dispute about it, as despairing of successe, though using never so effectual convincing arguments to disingage them in the belief of it; and therefore appealing from them, I shall apply my self to the more literate and judicious, by intendment not so tenacious of a specious tradition, but that they can with patience both hear it questioned, and, if occasion be, refuted; not unwilling to desert it, if, upon trial, it may prove unfound and spurious, and accounting it as thank-worthy to discover an old error, as to deliver a new truth, especially since truth is not more often, nor more easily, lost by too much altercation, than error is contracted and continued by too little. I will not undertake, nor do I mean to make it my task here, to shew how it came to passe, that *Gavelkynd* is in a

manner proper, and *Villénage* improper onely to Kent, no other County partaking with it, either in that degree of commonnesse and universality wherewith Kent is overspread of the former, or in the immunity it enjoyes from the latter; the finding out the true cause whereof hath not escap'd my diligence, although my skill I confesse it hath. But, be that as it will, and albeit I cannot in the affirmative shew what was, yet in the negative, that this was not the means whereto we ow the continuance of our *Gavelkynd*-customs at and since the Conquest, shall be my next assay to prove, and that by shewing what more than suspicion of errour this Monkish relation (for such it is) deserveth to fall under with men of unbiaſsed and dis-ingaged judgments. But first, will it please you to hear the story it self, as it is already Englished by the illustrious Author of the Illustrations upon the Poly-olbion, pag. 302. who there suspects the same as not of clear credit.

When the Norman Conquerour had the day, he took his journey towards Dover Castle, that he might with the same subdue Kent also; wherefore Stigand Archbishop, and Egelsin Abbat, as the chief of that Shire, observing that now whereas heretofore no Villains had been in England, they should be now all in bondage to the Normans, they assembled all the County, and shewed the imminent dangers, the insolence of the Normans, and the hard condition of Villénage: They resolving all rather to die, than lose their freedome, purpose to encounter with the Duke for their Countries liberties. Their Captains are the Arch-Bishop and the Abbat. Upon an ap-

^a Green-boughs, as Mr. Lambard hath it: a likely matter, at that time of the year, being about November.

pointed day they meet all at Swanescomb, and harbouring themselves in the woods, with ^a boughs in every mans hand, they incompasse his way. The next day the Duke coming by Swanescomb, seemed to see with amazement, as it were a wood approaching towards him, the Kentish men at the sound of a trumpet take themselves to arms, when presently the Archbishop and Abbat were sent to the Duke, and saluted him with these words: Behold, Sir Duke, the Kentish men come to meet you, willing to receive you as their Leige Lord, upon that condition, that they may for ever enjoy their ancient Liberties and Laws used among their Ancestours, otherwise presently offering war; being ready rather to die, than undergo a yoke of bondage, and lose their ancient Laws. The Norman in this narrow pinch, not so willingly as wisely, granted the desire: and Hostages given on both sides, the Kentish men direct the Normans to Rochester, and deliver them the County, and the Castle of Dover.

Thus Spot, St. Austins Chronicler at Canterbury, living under *Edw. I.* he, I say, and onely he, and such others as of latter times write after his copy: for before him, and in that Interim of more than 200 years, between the Conquest and the time he wrote, no published Story, no Chronicle, no Record of any kind, Kentish or other, may be found to warrant the ^r relation; a matter the whilest so remarkable, as, if true, not likely to escape all our Historians pens that were before him, those especially about the Conquest. Amongst which ^r *Ingulphus* silence is the more remarkable, since he is so particular and punctual in relating and recounting the

^a See *Cambdens* *Britann.* in *Kent.*

^r *Hist. of Croyland Abbey.*

the Conquerours oppugners, and their proceedings. When afterwards Rochester Castle, kept by *Odo* the Conquerours brother, against *William Rufus* in the year 1088, was by him besieged (a thing of as small moment at least as this) why, all the Stories with one consent were full of it, particularly *Malmesbury* and *Paris* (amongst other occurrences) tell of a much declined nick-name, wherewith those were threatened that should refuse to come to the Kings assistance in that action, which the former hath *Nidering*; the latter, *Nithing*, *quod Latine nequam sonat*, say both, and rightly, if it come, as I conceive it may, from the Saxon nipe, i.e. *nequitia, malitia*, as it is in several places found in their ¹ Psalter; a nick-name this, of such infamy, as fastened upon the most detestable and barbarous Villeins, such as were guilty of despoiling and rifling the dead, which the 83. of *Hen. 1.* Laws calleth *Weilreif*, a term (identical, I take it, with *Walaraupa* in the *Legis Boior.* tit. 18. cap. 3. parag. 1.) which *Textus Roffensis* thus illustrates in a place: *palneap 17 niphinger dæbe. 717 hpa ofracen pille do þ mid eahta 7 feoppti7 fulbopenna ðe7ena.* i.e. (according to the Latine version in *Jornalensis*, where this Law occurs, as the 21th of those of King *Ethelred*, at Varneting:) *Wealreaf. 1. mortuum refare est opus nithingi: si quis hoc negare velit, faciat cum xlvij. Thaynis plenè nobilibus.* This (of *niphinger dæbe*) is that surely which the old Glossary (new set forth) at the end of *Hen. 1.* afore-said Laws, harps upon, in the word *Refare*, and is there glossed by *opus nithingi*, as also in the word *Wealreaf*. But to return to our Story, that I mean of the siege laid to Rochester-castle, which though of as small, if not lesse, concernment

¹ Psal. 54. 17.
Psal. 51. 1. in
marg. Psal. 72.
8. in marg.

^a *Testis falsus in uno, redditur suspectus in omnib. Farinac. de testib. q. 67. n. 3.*

Kent conquered by the Normans.

^z *Flor. Wigorn. an. 1066. Rog. Hoveden, fol. 258. a.*

cernment than the other here in question, could find many Chroniclers to record it, and must this needs escape them all, till *Spot* had got it by the end? Besides, observe with me (what Mr. *Selden* there, and Mr. *Lambard* before him both note) his commixture of ^a a falsity about Villenage, affirming it was not in England before that time, which is apparently false by choice of testimonies, both from our Laws and other Saxon monuments, so obvious as I will spare to repeat them, setting that aside until I have dispatched the main matter of the Story, the composition, I mean, between the Conquerour and the men of Kent, with the occasion of it, which as it wants the warrant of confirmation by other elder Historians, not onely silent of it, but agreeing in asserting an universal conquest, so in flat contradiction of it, we find cleer testimony in *Florentius Wigorniensis* and *Roger Hoveden*, of our Counties fellow-suffering with her neer and more remote neighbours of Suffex, Surrey, Hampshire, Middlesex, &c. in the devastations, depredations, and other miseries of a countrey invaded, subdued, and (at least in some parts) harried by the Norman Conquerour, immediately upon that signal victory of his over the English, at the place where afterwards he founded that Abbey, from the Battel there fought, called Battel-Abbey in Suffex. You shall have my Authours own words: *Interea* (say they, ^z having but newly told the Story of that fatal Battel:) *Comes Gulielmus Suthsaxoniam, Cantiam, Suthamtunensem provinciam, Suthregiam, Middelfaxoniam, Herefordensem provinciam devastabat, & villas cremare, hominesque interficere non cessabat, donec ad villam quæ Beorcham nominatur, veniret: &c.* To this let me add

add a passage from the Story of the same Spot, where, after mention made of an Annuity, or Rent-charge given to his Abbey, by one *Sulburga*, the Lady of Brabourne, about the year 861, he subjoyns this: *Istum redditum* (saith he) *& jugum terræ apud Horton, & terram de Hengestehell juxta Wivelesburgum, Hugo de Monford abstulit, cui & Episcopo Baiocensi Willielmus Bastardus fere omnes terras Cantie contulit, contradicentibus monachis, sed minime prævalentibus.* Now if the Conquerour seized almost all the Kentish lands, and gave them to his brother, the Bishop^y of Bayeux, and *Hugh Monfort*, (as you may find further verified by Domesday-book, with cleer evidence of the like distribution generally throughout the Kingdome, whence that of ² *Ingulphus: Deinceps ergo comitatus & baronias, episcopatus & prælatias totius terræ suis Normannis Rex distribuit, & vix aliquem Anglicum ad honoris statum, vel alicujus dominii principatum, ascendere permisit:*) how is it likely that Kent should escape or speed so well, as by that specious Story of the Swanescumb encounter and accord, the Monk would bear the world in hand? Truth is, by the way, the Harpies of those rapacious times (the Conquerours kinsmen and countrey-men) laid about them notably for the fattest morsels they could find in most places, out of Church-lands^a especially: (*tempore autem prædicto Normannorum, quo Dux Will^m cum suis armatis copiis Angliam intravit, vastavit, penitus & subegit, omnia in prædam data sunt, &c.* quoth *Gervase* the Monk of Canterbury) and what with force on the one hand, and flattery on the other, obtained so many, as at length the pressure gave occasion to the Religious of those times for a general complaint

^y See Order. Vital. an. 1070.

² Hist. Croyl. fol. 512. b. See also Eadm. Hist. pag. 6. *Usus ergo, &c.*

^a See the Epistle in the Appendix, Scriptur. 21.

complaint thereof unto the Conquerour, with petition for redresse, and amongst the rest, the Monks both of St. *Austins*, and of the Cathedral at Canterbury, particularly seem to joyn in the Remonstrance; whereupon (for the former) the Conquerour directs a writ, brief, or charter to *Lanfrank* the Archbishop, &c. for redresse of what wrong in that kind had betided the place, of such tenor as you shall find in the Appendix, Scriptura 13. And for the Cathedral, besides a particular charter granted by the Conquerour to the Monks there, *Ut prædicti monachi potestatem habeant terras suas dandi & tollendi ubicunque eis melius visum fuerit, quicunque eas teneat*: &c. they shew a general writ of his to Archbishop *Lanfrank* and others, for the restitution and reseizing of whatsoever had been taken from the Bishopricks and Abbeyes all the Kingdome over, whereof it seems they had particular occasion to make use, both by their care to record it, (as an evidence much concerning them) in their Leigers, as also by the record they likewise there keep of the plea between their said Archbishop, and the foresaid *Odo*, at Pinenden, whereof, from the Records of the Church of Rochester, which it equally concerned, Mr. *Selden* in his Notes upon *Eadmerus*, pag. 19. hath given us a copy; a pregnant evidence for our present purpose in many respects. This last named Charter, because it may be the first that ere you saw of this nature in print, and may conduce to a right judgement of *Spots* Story, I shall advisedly recite at large in the Appendix, where you shall find it, Scriptura 14. But (no longer to digresse) be further advertised (good Reader) that whereas by *Spots* relation, the Conquerour was opposed by the
Kentish

Kentish men, in his march through West Kent towards Dover, and after composition with them at Swanescumb, was by them conducted to Rochester, and put in possession of the County, together with the castle of Dover; the very truth is, by the more credible relation of ^b *Gulielmus Pictavensis* (a writer of the same time, and the Conquerours own Chaplain, followed by ^c *Ordericus Vitalis*) the Conquerour, after his victory neer Hastings, made not first to London, and then to Kent, but after settling his affairs about Hastings, presently took his journey towards Dover ^d by the way of Romney, where having avenged himself of the savage kind of Inhabitants, for the slaughter of certain of his men, by some mistake landing at that place, (of *Picta-venensis* called *Romanerium* for *Romaneium*, as of *Ordericus* rightly named) he thence advanced on to Dover; whither, though a numberlesse multitude of people had betaken themselves, as to a place, by reason of the castle, inexpugnable, yet dismayed with the Conquerours approach, the place with all readinesse submitted to him, who, after eight dayes fortification of it, marching from thence, at a place not far from Dover, the Kentish men of their own accord came in to him, sware him fealty, and gave hostages for performance. Marching then onward, and understanding where *Stigand* the Archbishop, with the Earls *Edwin* and *Morcar*, and other English Nobles (who conspired to set up *Edgar Etheling*, King) were assembled, he made towards them with a strong power, and fate down not far from London; whence certain companies issuing out against him, he, with 500 of his Horsmen soon repelled them, forcing their retreat back into the

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citie,

^b *Gesta Guliel. Ducis, &c. pag. 204.*
^c *Hist. Eccles. lib. 3. pag. 502.*

^d Herewith concurrith *Malmesbury, fol. 116. b.* where he saith, *Qui cum & belli Hastingen-sis victoria, & Castelli Dofren-sis deditione terrorem sui nominis sparsisset, (Conquæstor) Londonium petiit, &c.*

• *Matth. Paris,*
Hist. in Hen. 3.

citie, not without the slaughter of divers by the way. This action was followed with the firing of all buildings whatsoever behither the river (of Thames.) Passing over which, the Conquerour removed to Wallingford, whither Archbishop *Stigand*, and other of the English Nobility followed him, and deserting young *Edgar*, made their peace with the Conquerour, receiving him as their Sovereigne: whose example the Londoners soon following, rendred themselves also to the Conquerour, and (as the Kentish men had done) delivered him hostages; such, both for number and quality, as he required. Thus *Guilielmus Pictavensis* followed (as I said) by *Ordericus Vitalis*, a writer of, as it were, the same time. By which relation it is evident, that the Conquerour intending for Kent, did not set out (as *Spot* insinuates) from London or those parts, but on the contrary ere he went to London, made himself sure of Kent, by taking Dover castle, (the Lock and Key, as one^c calls it, of all the Kingdome) and from thence, after the Kentish mens voluntary submission to him, marcheth towards London. Now, from the silent passing over most of these particulars in other writers, of and about this Authours time, all save onely *Ordericus Vitalis*, let none call the truth of them in question, since their undertakings were for compiling a more general Story, than that of the Conquerour alone, who therefore were more succinct and summary in their relations, advisedly (by their own confession) pretermittting many particular passages. *Ingulphus*, after a summary relation of the Conquerours acts at his first coming in, excuseth his brevity thus: *Summatim namque ac carptim victoriosissimi Regis gesta narro, quia secum sequi*

sequi annuatim, passimque scribere gressus suos non sufficio. Whereas, on the contrary, this Authour (*Pictavensis*) undertaking onely the acts and life of the Conquerour, (whose Chaplain he was) sat himself to exspatiate in all memorable occurrences. Besides, (which I cannot but observe, as tending much to the credit both of our Authour and his relation) although *Gemeticensis* (a writer of the same time) balk the most of these passages; yet excusing himself also for his studied brevity, he refers the Reader to our Authour, for fuller intelligence, making mention of his Story (like as *Ordericus Vitalis* also doth) with great applause, in these words: ^f *His per anticipationem breviter intimatis, ad finem gestorum Willelmi Regis Anglorum, & Ducis Normannorum, de quibus fastidio Lectorum compendiosè consulentes, quædam perstrinximus, veniamus. Si quis verò plenius illa nosse desiderat, librum Willelmi Pictavensis, Luxoviorum Archidiaconi, eadem gesta sicut copiosè, ita eloquenti sermone affatim continentem, legat.* Of whom *Ordericus Vitalis* ^g further thus: *Ipse siquidem prædicti Regis Capellanus longo tempore extitit, & ea quæ oculis suis viderit, & quibus interfuerit, longo relatu vel copioso indubitanter enucleare studuit.*

Lib. 7. c. 44.

^g Hist. Eccles. lib. 3. propè fin.

Thus far then in way of refutation of *Spots* Story in grosse, or in the general; a meer Monkish figment, I conceive, politikely devised, and with a design to bring a perpetual obligation on the Kentish men to his own Abbey, as owing (forsooth) the continuance of their ancient liberties partly to a quondam Abbot of the place: even much such another, as that of the Devils attempt upon S. *Pancras* chappel to overturn it (whereof in the Anti-

quities of Canterbury, pag. 61.) smelling too much of the Legend, and invented doubtlesse for the greater glory of the Abbey.

^a Lamb. Per-
amb. pag. 30.
Author Anti-
quit. Britan.
in vitâ Stigandi
Archiep.

Now descend we to the result of the Story, and the inference upon that meeting, made by *Spot* and ^h his followers, which in short is, that hence, or hereupon Kent reteined her pristine priviledges, instancing (some of them) in *Gavelkynd* for one, and particularly that hence, as formerly Kent (participating in common with the whole Kingdome in that point) had no Villeins, so by that means from henceforth (by a singular priviledge above other counties) it never had any. Indeed, (which I note as adminicular to this assertion) among the articles by which the Auditours of our Cathedral were to take accompts of the Bailives of that Churches manours out of Kent, recorded in an old Lieger there, these are some: 1. *De Censariis Nativorum quod possint exire tenuram Domini ad laborandum & operandum extra, & statim post opera redire.* 2. *De finibus Nativor. pro filiabus suis maritandis infra tenuram Domini.* 3. *De finibus Nativor. post mortem patrum suorum, quod possint habere terras quas patres habuerunt, tenendas ad voluntatem Domini, secundum consuetudinem maneriorum:* Whereas in the like articles for the manours in Kent, not one of these occur; but, as if improper for the manours of that county, all are quite omitted, to the manifest confirmation of *Spots* acquitting Kent of Villeins and Villenage. True, I confesse, nor can it be denied as to those dayes, the time I mean when those Articles were set on foot, which, judging of their age by their character, seemeth to be about *Edw. 2.* dayes: but that there were none at,
or

or after the Conquest (the point in issue) is under favour an assertion little truer, if not fully as false, as that other of his concerning the composition with the Conquerour. For proof whereof, to say nothing of *Hubert* (the Archbishop of Canterbury in King *Johns* time) his acquitting both his own and the Monks possessions, amongst other burthens, from that of ¹Villénage, because possibly this privilege might concern their possessions elsewhere, and not in Kent: I appeal to a writ of King *Edw. 2. anno regni sui septimo*, to the Assessors of a Tenth and Fifteenth in the county of Kent, in the behalf of the Abbat of *Spots* own Abbey (St. *Austins*) and his Villeins, whereof you may find a copy in the Appendix here, Scriptur. 15. followed with another of a very rare deed or charter of about *H. 3.* time, taken from an ancient Manuscript Chartulary of the very same Abbey, now remaining with Sir *Thomas Cotton*, which I must confesse to ow to the courtesie of my late learned friend Sir *Simonds D'ewes*, cleerly shewing Villénage to have obtained and taken place in Kent, and even in our *Gavelkynd*; a Tenant to that Abbey of certain land in *Gavelkynd* doing homage to the Abbat there for the same, expressely as for Villénage, and covenanting to perform as much service to his Lord, as to the same Villénage apperteined, as by the deed (which whether I should more value for it self, or for the hands sake that reach'd it to me, is with me some question) more fully may appear, Scriptur. 16. Add hereunto that the Laws of *Hen. 1. cap. 76.* make mention of *Villani* in Kent: *Differentia tamen Weregildi multa est in Cantia Villanorum & Baronum.* So that chapter is concluded. To ascend yet higher,

Villani in Kent.

¹ *Godwin*, Catal. of BB. in the life of *Hubert*.

^k Cap. 2. Sect.
28. pag. 169.

Servi in Kent.

^l In Armar.
Ecclef. Cant.

^m In Archiv.
Archiep. Cant.

higher, in Domesday-book, and in the Kentish Survey there, *Villani* frequently occur, by which, if, after the common opinion of modern and some elder Lawyers, Bond-men (such as of latter times and at this day we call Villeins) are not to be understood, but rather (after the ^k *Mirroir*) *Cultivers de fief demorants en villages uplande; car de vill est dit villein*, &c. or, in *Fitzherberts* expression: *Base tenant, qui fesoit villein service, mes ne fuit pas villein*. i. e. A base Tenant, that doth Villein service, but neverthelesse is no Villein; then, to put the matter out of all doubt, know that besides *Villani*, you may withall find, and that in divers several manours too in that Kentish Survey (particularly in the Bishop and Church of Rochesters manours of Southfleet, Stone, Falkham, Woldham, Trottesclyve, Snodeland, Halling, Friendsbery, &c.) expresse mention of *Servi*, which of all hands is confessed to denote men of servile condition, bond-men, or bond-slaves, *Villeins*. And take along with you this note by the way, that the pretended composition in *Spot*, by which he will have Kent for the future conserved in her immunity from Villenage, did for many years antedate the time of this Survey; that, pretending to the Conquerours first coming in, this, not beginning, at the soonest, untill about fourteen years after. I might follow this with some pregnant passages to this purpose, such namely as that in the old ^l Custumal of Ickham manour in East Kent: *Et isti Cotarii nusquam capient auram nisi apud Ickham vel Brembling*: such (secondly) as that in a like ancient ^m Custumal of Tenham manour: *Quelibet Coteria tenet unum messuagium, tres acras, & debet metere 8 acras, &c.*
Et

Et facient quicquid serviens de manerio præceperit:
such (thirdly and chiefly) as that in the ⁿ will of
one Sir *William Septvans* Knight, sometime owner
of Milton neer Canterbury, dated anno 1407: *Item*
lego Adam Standerd, Thomæ Hamonde, Roberto Stan-
derde, Roberto Chirche, & Johanni Richesforde ser-
vis & nativis meis, pro bono servitio mihi ab eisdem
facto, plenam libertatem, & volo quod quilibet eorun-
dem habeat cartam manumissionis sigillo meo signa-
tam, in testimonium hujusmodi meæ ultimæ volunta-
tis. I might add, that, what in confirmation of the
probability of *Spots* Story is added, *viz.* that here-
upon the King so stomached the Archbishop, as to
put him by his place and office in his Coronation,
hath no support or warrant from any Story of those
times, all which, with *Gervasius Dorobornensis*, a
Monk of his own Church, agree in the yeilding and
rendring other reasons hereof, chiefly his being in-
terdicted his Episcopal Function, for invading the
Sec of Canterbury, *Robert* the Archbishop being yet
alive, and undeprived, and holding it and Winche-
ster both together: which is the more probable, be-
cause for the same reason four years before, *Wol-*
stane the elect of Worcester refused to be consecrat-
ed Bishop by him, and was sacred by *Aldred*, the
Archbishop of York, as the Monks of Worcester
and Westminster have it in the year 1062. But to
keep to our Villenage, which apparently is traceable
in Kent sithence the Norman Conquest. Nor in-
deed seemeth it to have been otherwise here (in
this particular of Bond-men, or Villeins) in the times
before the Conquest; witnesse (besides the mention
of such in the ^o Saxon Laws of *Ethelbert*, *Lothaire*,
and *Eadric*, all Kentish Kings) an old Saxon tripar-
tite

^a Penes Regi-
strum Confis-
torii Cantuar.

Nativi.

^o Ms. in Text.
Roffens.

tite deed or charter purporting a contract of marriage, which, because it may serve to exemplifie the manner of espousals in those elder times, and is a great illustration to a model or constitution of that nature exhibited of late by Sir *Hen. Spelman*, Concil. Tom. 1. pag. 425. and Mr. *Whelock*, in his late Edition of the Saxon Laws, pag. 60. I shall tender it to common perusal, from that part of it left and laid up at Christchurch, transcribing it in the Appendix, Scriptur. 17. Before I proceed, having made mention of that constitution, touching the manner and rights of espousals, let me (so fairly occasioned, with excuse for the digression) help to rectifie the edition with some animadversions, which to me it seemeth much to want, in the Saxon especially. First then I conceive, the first word of the second chapter in the Saxon copy, *viz.* (þ) as belonging to the precedent chapter or article, ought to be taken thence, and placed as the very last word of that precedent article; and so we are to read it, 7 aborȝian hiȝ ȝrind þ, i. e. according to the Latine copy, & *plegient* (rather, *fidejubeant*) *hoc amici sui*. In the next, or second article, I conceive the two last words there, ȝon ȝyȝȝan, belong to the next, the third article, which consequently is to begin there. As imperfect is that article in the end as in the beginning, wanting to perfect it, the whole first line of the next (the fourth) article, *viz.* ȝiȝ heo lenȝ ȝy ȝonne he; all which, I say, belong to the precedent article, the fourth being to begin at ȝiȝ hiȝ ȝpa ȝeȝorȝorȝ biȝ, which I conceive not well turned (as in the new Version there) by *si quidem eveniat*, being rather, under favour, thus to be rendered: *si sic conveniat*, and thus indeed runs the old version

version in the precedent page; and so (to passe by some intervening literal mistakes) is that in the close of the sixth article, 7 þo to ðam bonze je ðe ðær peððer jalðenð jy, by *satisfactionemque accipiant de celebrandis nuptiis*. The old version here is: *Et excipiat inde plegium qui jus habet in vadio*. I once pitched upon this Version: *Satisfactionemque inde accipiant qui sponsalia ordinaverint, i. e. Paranympi*. But leaving that, to return to our purpose. By what is premised, I conceive we have ground enough to conclude against what *Spot* singularly delivers touching the Conquerour and Kentish mens meeting, with the manner, product, and result of it; and consequently, what is built upon it, our counties reteining her *Gavelkynd*-customs and priviledges by means thereof.

But after this pulling down with one hand, to help build up another while with t'other, and not to leave the cause of our enjoyment of those Liberties (that especially of Partition, the more eminent property in *Gavelkynd*) thus uncertain, let us enquire into the carriage of affairs of this nature about the times of the Conquest, when they say we obtained to preserve and continue this (amongst the rest) by composition with the Conquerour, whilest the rest of the Kingdom was deprived of it. I say deprived, because as *Privatio præsupponit habitum*, so those who are of this opinion take it for granted, that before the Conquest, by vertue of a national custome first induced by the Saxons, and by them traduced from the Germans, intended by *Tacitus* in his *Hæredes successoresque sui cuique liberi*, &c. and afterwards incorporated into our Laws by a King *Canutus*, inheritances descended and were partible af-

p L. decem in
fi. de stipul. l.
manumissio-
nes, de justit. &
jur.

q LL. *Canuti*,
par. 2. cap. 68,
& 75.

ter the nature and manner of our *Gavelkynd*, at this day. So of late (amongst others) Sir *Hen. Spelman*, in his Glossary, verb. *Gaveletum*; *Daniel* in his History, fol. 38. *Verstegan* in his Antiquities, pag. 57. Archbishop *Parker* in his *Antiquitates Britannicæ*, pag. 108. and Mr. *Lambard*, in his Glossary, verb. *Terra ex scripto*, though afterwards in his Perambulation, pag. 545. he is found to crosse himself herein, by saying that this custom was brought hither out of Normandy by *Odo* the Conquerours brother. Now 'tis true, and not to be denied, that by these Laws of *Canutus* inheritances were partible; but how? It may be equally, (like our *Gavelkynd*) but it is not so expressed, nor do the words inforce it. It's ordered there indeed, that a partition of the estate be made, in the one, between or among the wife, children, and next of kin, by the Lord; in the other, by the heirs among themselves; in both, not *ȝȝiþe emne*, or *ȝȝiþe eȝen*, i. e. equally, but *ȝȝiþe ȝihte*; in the former more explicite thus: *ælcum be ȝæȝ mæþe*, &c. i. e. (according to the old version in *Brampton*) *unicuique secundum modum qui ad eum pertinet*. Here is now no equal division spoken of, no equalling the younger with the elder brethren, or the like. But the estate is to be shifted *ȝȝiþe ȝihte*, i. e. *according to right*, justly, or if you will (after the old version of the latter Law in *Brampton*, being the same verbatim with that in Mr. *Lambard*' elsewhere) *rectè*, every one to have his due, haply after a Geometrical, not Arithmetical proportion. Again, not by equal proportion, in point of goods at least, for each was to partake therof, (as in the *Gavelkynd* partition^f in Ireland, each one a part according to

^r Archaion, fol. 136. a.

^f Davies Reports, *Le Irish custome de Gavelkind*, fol. 49.

to their quality, degree, or desert) *pro rata*, happily their *reasonable part*, whence indeed some do fetch and ground a writ we have among us, called *Rationabili parte bonorum* (concerning which there is a question in our books whether it lie by the common Law, or by the custome onely of some ¹ Countries, and whose footsteps may be traced in venerable *Bedes* English Saxon Ecclesiastical History, lib. 5. cap. 13.) but of this matter more anon, at the close or foot of this Proposition. Or again, *ꝛꝑꝑe ꝑꝑhte*, i. e. *juxta arbitrium boni viri*, as the Civilians in like case use to speak, or *pro arbitrio Domini*, as it is in the former of those Laws, be *hꝑꝑ dꝑhte*, i. e. *judicio suo*, whose place, by provision of succeeding times, both here and in Scotland, was supplied by the ^u Ordinary, first joyntly with the deceaseds friends, afterwards without them and alone, as happily more to be confided in, because by common intendment, as more knowing, so more careful to deal uprightly; though it be utterly unknown or uncertain when this trust began by written Law to be committed to the Ordinary; if I may guesse, about what time that provision was made for the like in ^u Normandy, whereof in *Matth. Paris* History, anno 1190. pag. 161. edit. ult. Or else (to proceed) *ꝛꝑꝑe ꝑꝑhte*, according to right, i. e. Custome, or right, as it is ordered and directed or tempered by the usages of severall places, for ^v *Qualibet provincia abundat suo sensu*. Apposite and pertinent to this purpose is that observation of a late compendious ⁿ Historian of our own, upon occasion of the Confessours collection and compilement of, as it were, a *Codex Legum*, (whither we may refer the original of *Magna Charta*) a Standard-law to be

¹ See Cowells Interp. verb. *Rationabili parte bonorum*, & Swinburne of Testam. par. 3. cap. 16, & 18.

^u *Bracton*, fol. 60. b. *Seld.* Tit. of Hon. cap. 5. sect. 21. p. 724. *Stat. Will. Reg. Scot.* 1. cap. 22, & 30.

^x *Custumar.* Normann. cap. 20, 21.

^y 27. *Distincta Utinam.*

^z *Daniel*, in *Will.* 1.

current over all the Kingdome: *Before these Collections* (saith he) *of the Confessours, there was no universal law of the Kingdome, but every several Province held their several Customes, all the Inhabitants from Humber to Scotland used the Danique Law, Merchenland, the middle part of the Countrey, and the state of the West Saxons had their several Constitutions, as being several Dominions, and though for some few years there seemed to be a reduction of the Heptarchy into a Monarchy, yet held it not so long together (as we may see in the succession of a broken government) as to settle one form of order current over all, but that every Province, according to their particular Founders, had their Customes apart, and held nothing in common, (besides Religion, and the Constitutions thereof) but with the universality of Meum & Tuum, ordered according to the rights of Nations, and that Jus innatum, the common Law of all the world, which we see to be as universal as are the cohabitations and societies of men, and serves the turn to hold them together in all Countries, howsoever they may differ in their forms.* So that though we shall admit these with the rest of *Cnutes* laws to be national, as by their Preface (that, I mean, of the second part, containing his secular or politike Constitutions) they are apparently no other, (*Ðiſ 1ſ ðonne ƿeo populb-cunðe Ʒeƿeðneſ ðe ic ƿille mið minan ƿitenan ƿæðe. ꝥ man heað oƿeſ eall Englaſaſ:)* yet I take it these Laws (68. and 75.) conclude not for a national, general, or universal descent of Inheritances, by an equal or Arithmetical division amongst all the children or heirs, nor indeed for more than this, that a partition was to be made of the same,
in

in point of proportion, more or lesse, according to what, *pro more patriæ vel loci*, and (in point of goods) *juxta arbitrium Domini*, was just and fit, there being no precedent general Law, or Canon here (now extant at least) to regulate, or give directions in case.

But if not nationally, (for, to give one instance instead of many, *Thoroldus*, in a Charter of his to Croyland Abbey, recorded by ^a *Ingulphus*, makes mention of his Lord and kinsman, Earl *Algar*, the eldest son and heir of *Leofric*, Earl of Leiceſter, and his Countesse *Godiva*, *Thorolds* ſiſter, in the year 1051.) yet I am contented to admit and agree, that provincially, and particularly here in Kent, we had ſuch a Cuſtome both before and at the Conqueſt: neither am I againſt their opinion, who affirm the like courſe and cuſtome currant in thoſe times throughout the Kingdome, as not being deſirous to inſiſt much upon this example in *Thoroldus* charter, or any ſuch like, to the contrary, for the preſent, though I doubt whether it can concludently be argued from (the grounds and authorities they ſeem to go upon) thoſe Laws of *Canutus*. Nevertheless be it ſo: for though ſome will ſay, the Conquerour found it not here, but either by himſelf, or his brother *Odo*, brought it hither out of Normandy, and by the pattern and practice of his own Countrey planted it here, (how can this ſtand with *Spots* Story by the way?) yet I am not of their mind. For had it been from thence tranſplanted hither, probably it would not have been confin'd to Kent, a corner onely of the Kingdome; but have ſpread it ſelf rather over the whole, by the Conquerours means, whoſe inclination and endeavours
to

^a Hiſt. Croyl.
fol. 519. a.

to propagate and implant here the Customes of his own Countrey, are too eminent and notorious to be doubted of. 'Tis nothing probable then, (what some have deemed) that we borrowed this custom from Normandy, or that *Odo* was wrought upon by any pattern of that Countrey to set it up amongst us, but rather found it here at his coming. Supposing therefore such an universal custome here in England before and at the Conquest, it will concern us next to make enquiry, how it came to passe, that when all the Realme beside, hath in a manner discontinued it, Kent onely reteins it, in that general manner at least, whereby in proceffe of time it is become (as the Year-book quoted of ^bMr. *Lambard* phraseth it) as it were a common Law there. The answer must be but conjectural, since Records herein fail us of all light, as well as Histories, all but *Spots*, who for the reasons pre-alleged shall be none of my Resolver. Will you have the common answer? Why then they say the Conquerour abrogated this custome in all parts of the Kingdome save onely in Kent, which obtained to continue it by composition with him when they met at Swanescumb. But having formerly said (I hope) enough in answer hereunto, I will seek further, and try if some other more probable cause may not be found for it.

^a Perambul.
pag. 538.

^c Coke upon
Littleton, fol.
14. a.

The Conquerour then (I will suppose) consented to the continuance of this custome generally throughout the Kingdome, in all, I mean, but Knight-service land, the descent whereof to the eldest son alone, (partly for his own, and the Realms better ^c defence and strengthening, and partly for the upholding and maintenance of gentile

^d gentile families) I suppose none doubts to be lesse ancient than the Conquest, for so much of it (at least) as is of ancient Tenure, (as Mr. *Lambard* desires to qualify it :) Nay, and seems to give expresse allowance to it, without distinction of lands, by that 36th of those Laws in *Ingulphus* copy, which after the conquest, he granted to the people of England, and were indeed (as the title of them intimates) the Laws of the Confessour, his predecessour; or rather, say ^e some, of the Confessours predecessour, *Canutus: Si quis intestatus obierit, liberi ejus hereditatem equaliter dividant.* So runs the Law according to ^f Mr. *Seldens* version from the original French or Norman. Some haply may take this as intended onely as a rule for goods, not for lands too. But to that it may be replied, that the word (*hereditatem*) there (if of that acception then, as since and at this day) will not admit of that construction; since, by the common opinion both of elder and more ^g modern Lawyers, nothing passeth with us here in England, *jure hæreditario*, but onely Fee, and that Hereditaments are such things as do naturally, and of course descend to the heir, and neither to the Executour or Administratour, as chattels do, whence that of *Littleton*, Sect. 1. *Feodum idem est quod hæreditas*, answering to that of ^h *Bracton*, long before him: *Feodum est id quod quis tenet ex quacunque causa sibi & hæredibus suis.* See to this purpose *Glanvill*, lib. 13. cap. 27.

But here we meet with an objection. By this argument (will some say) you restrain and tie up the Constitution to lands onely, excluding goods, or chattels, as our Lawyers call them, from what ground, see in Sir *Hen. Spelmans* Glossary, verb. *Capitale*, to which

^a *Hodie nobilitas subinde allodiales satrapias divisioni inter liberos obnoxias, in feuda redigere solet; scil. ut primogenito consulat, & potentia nervis in unum glomeratis, suis familia splendor multitudinis liberorum in posteritate non gravetur.* Nic. Burgund. de Consuetud. Flandriæ, Tract. 7. num. 7.

^b *Camb. Britan. Seld. Polyolb. and Spelm. Councils.*

^c *Notes on Eadmer. p. 184.*

^d *Cowell Interpr. verb. Heir, and Hereditament.*

As also Instit: lib. 2. tit. 14. pag. 166.

^e Lib. 4. fol. 263. b.

Objection.

Solution.

which add *Freherus* his Notes upon the Decalogue, published anno 1610. Precept the last. To construe it thus, (I must confesse) or of either singly, or alone, were, in my judgement, too much to restrain and streighten it, and in effect to conclude it a lame and imperfect Constitution, ordering the intestate dead mans estate, and the disposal thereof, but to halves, as we say; wherefore I conceive, that to take the word (*Inheritance*) here to comprehend both, (as I suppose æhte doth in that 68. of *Canutus* Laws, whereto this here, if it were not taken thence, may seem to have some reference) is not more reasonable, than to understand it either of chattels, or lands singly, seems to me otherwise.

Objection.

Why but then (say they) you admit of a power of devising Inheritance by will, and consequently make Fee and Free-hold deviseable, and that by Law, arguing from those words: *Si quis intestatus obierit*, &c. True; distinguishing times: for (I take it) nothing was more usual in thoseⁱ times, (I mean before the Norman Conquest, and this, if you mark it, is originally a Law of the Confessours, or rather of *Canutus*, his predecessour) than to devise and give lands away by will, though therein they receded from (their first copy) the German custome, of *Nullum testamentum*; a provision afterwards received into the body of the Feudal Law, which thus hath it:^k *Nulla ordinatione defuncti in feudo manente vel valente*. It was then, I say, a usual thing, with their Lords consent at least, to dispose of their land by will, especially their *Bocland*, thence haply, amongst other titles given it (as being sometimes termed and turned^l *Alodium*, or therwhile^m *terra hereditaria*, oftenⁿ *terra libera*) not

Solution.

ⁱ See *Gesta Gu-
liel. Ducis*, &c.
p. 200. b.

^k Lib. Feudor.
1. tit. 8. parag.
1. & ibi *Horo-
mannus*.

^l Versio Frag-
menti Saxon in
Text. Roffenf.

^m LL. *Aluredi*,
cap. 47. apud
Fornalensf. LL.
Canut. cap.
104. ibid. LL.
Edo in *Lamb.*
fol. 136. a.

ⁿ LL. *Ethelredi*,
cap. 2. in *Fornal.*

not seldome called ° *terra testamentalis*, that is (as an old Leiger-book in Guildhall London expounds it) *terra quam homo potuit in lecto suo languens legare*: with this limitation notwithstanding, that such *Bocland* were not by precaution in the original gift or grant, liable to that or the like restriction, in point of alienation, occurring in the 37th of King *Alfreds* laws, which neverthelesse extended but to strangers, a man being there forbidden to alienate his land of that nature of his mize boph, i. e. *extra cognationem vel progeniem*, or, in the Civil law phrase, *extra familiam*, from his own kinred or family, whence perchance it came afterwards to passe, that in such *terra gentilitia*, the heirs concurrence was required and used in the alienation. Instances of this kind (of disposing land by will, I mean) might be given in abundance, but a few may serve the turn. To passe over, as obvious, because publike, King *Alfreds* will, at the end of his acts and life by *Asserius*, though I might here perhaps not impertinently take up that of *Regis ad exemplum*, &c. to let that passe, I say, as also for the like reason, to omit *Byrhticks* will of Mephram in Kent, extant in the Perambulation, pag. 492. whereunto (if need were) I could add many more examples, as well out of St. Albans private History, now of late made publike by my deceased friend Dr. *Watts*, as from the Records of the Church of Canterbury, whereof, besides the copies of some whole wills, I have by me severall extracts: To let all these passe, I say, I shall onely instance in a will or two, one of a very eminent personage, an *Etheling*, ° Prince *Ethelstan* by name, the son of King *Ethelred*, which I shall set before you in the Appendix, Scriptura 18, as

• Judic. Civit. Lond. ibid. cap. 1. LL. *Canuti*, c. 32. ibid. & Glossar. ad calcem LL. *Hen. 1.* verbo *Bocland*.

° Of whom see *Speed*, Hist. in the life of *Ethelred* the 32 Monarch,

Scriptura 22, the other; with some imperfections and misprisions here and there, I confesse, but through the Transcribers fault that entered them in the Leiger, and by reason of his ignorance (it should seem) of the Saxon tongue and character, which I dare not undertake to rectifie. Thus for practice. As for law: besides that power in all men in those times to devise land in general, by their wills, without any violence deduced and concluded from that 68 of *Canutus* laws, providing how a mans whole estate (the Lords Heriot onely excepted) shall be disposed of, in case he die intestate, we have a more expresse law for it afterwards, the 76th I mean, for such land at least as is there termed land *gepeped* be *rcýne* *gepitznerre*, i. e. (as Mr. *Lambard* construes it) *terra omni lite soluta*, or (as it is turned in *Jornalensis*, and the 35th of the Confessours laws *de Heretochiis* in Mr. *Lambard*, fol. 136. a.) *terra acquietata comitatus testimonio*. Let me illustrate it by a passage in a Charter ^a of King *Edmund* to *Aelfhere* his Thane in the year 941. of certain lands and possessions there called *Mulanton*, running thus: *Prout pater ipsius Ælfheri priorum temporibus nostrorum, sub contestamine totius popularis Senatus, sua pecunia, ab illo & ab alio, prout tunc temporis mos erat, adquisivit*. In effect it was, as I conceive, if not the same with *Bocland*, (called *terra testamentalis*, not onely because deviseable, but also in regard of the publike testimony of the Shire, required and used in the passing of it otherwise than by will) such land (like that mentioned of Mr. *Selden*, Tit. of Hon. par. 2. cap. 5. pag. 631. and there said to be holden, *quietè & absque omni calumnia*; or like that passed or conveyed, as in Sir *Henry Spelman*

^a In Armar.
Eccles. Cant.

mans Councils, pag. 319. and 333.) as was unquestionably a mans own, as upon the purchase or grant of it confirmed and assured to him in the legal way of those times, such haply (like those of latter times passed by Fine) the conveyance whereof was recorded and inrolled, or entred in the Shire-book, in publike Shire-mote after proclamation there made, for any to come in that could lay challenge, or pretend right unto it; whence not improbably our manner of recording conveyances, sometimes (as in Canterbury) in the Hundred, sometime in the Burgemote, otherwhile in both, whereof I am not unfurnished of instances. Thus for that kind of land. Now for *Bocland*, and how the Law stood there: 'Sir *Henry Spelman*, I confesse, is cleer of opinion against all power of alienation in the owner, and that of necessity it must be left to descend to the heir, and thence is called *terra hereditaria*, grounding upon that 37th of King *Alureds* laws, which he there recites. Under favour, that Law cleerly makes for the contrary, allowing unto the Possessor a power of alienation, saving where his hands are tied from it by an expresse provision and prohibition to the contrary, from those (the Ancestour, or who else) it came unto him from; a caution in my apprehension of the same nature with an exception, which (as 'Civilians use to say) *firmit regulam in non exceptis*. And as for its name of *terra hereditaria*, and the argument upon it, it is easily answered, as thus: so called it was to distinguish it from *Folcland*, otherwise called *Gafolland*, wherein the Tenant being but as it were a Lessee, Usufructuary, or Fermour, and having no propriety, upon his death, or other expiration of his term it

Vid. *Brañon*,
lib. 2. cap. 16.
num. 12. fol.
38. a.

' Glossar. verbo
Bocland.

' gl. Ex his im
addit. in parag.
item placet. In-
stit. de dona-
tio. & parag.
ut autem lex.
in Auth. de non
alien.

* Glossar. verb.
Focland, & verb.
Alodium.

* In Archiv.
Eccles. Cant.

* Quare? for
the writing is
not clear.

reverted to the Lord, and descended not upon the heir, as *Bocland* did, at least ought to do, being (because his own in propriety) hereditary, if not alienated by him in his life time, as it might be, in regard it was as well *terra libera*, as *hereditaria*, and so called, which *Folcland* never was, however Sir *Henry Spelman*, in a place[†] so assert, likening it to *Allodium*, which indeed was *liberum*, and consequently capable of alienation, either by gift or sale, to whomsoever the owner pleased; a property appropriate to *Bocland*, thence otherwise called, especially abroad, *Allodium*, whereof more hereafter. But further to clear the point of *Boclands* being alienable, and in the power of the owner to dispose of at pleasure, have here a pregnant passage for our present purpose, borrowed from a Charter^u of Archbishop *Wilfred* (who died about the year 830.) of the gift of certain houses to his Successors in the See of Canterbury, thus speaking: *Giƿ ðonne huelc mon ðæt uoƿð cƿæðe ðæt ne me ƿiæ min ƿic ðon aleƿeðƿan * ðon oðrum hiƿum to bƿucenne ne minum ærƿeƿeardum. ðonne ƿite he ðæt hit næf neƿne cƿiƿter cƿiƿcan land ne nengeƿ monneƿ boclonð ær min. 7 ðonne ƿe monne ieonð ðence 7 aƿmeale be oðerƿa monna boclonðum ie in ƿriðƿtolum ie butan. huaðeƿ hio meƿen hioƿa aƿen ƿellan oððe on hioƿa liƿ ƿan ƿue him leof ƿiæ oððe ƿon huðu min ƿcyle beon un ie....l denƿe ðon oðrum monnum hioƿa.* That is, in our modern English: *If any man shall say that this Mansion is not more in my power, or (the power of) my heirs to use, than of the rest of the Society, (or Covent) then let him know, that it never was Christ-church land, nor any mans Bocland before it was*

was mine: and then let him further think and consider by other mens Bocland, as well in priviledged places, as without, whether they may grant away their own (land, or possessions) or give it for (or, in) their lives times as pleaseth them, or wherefore mine should be of different kind to those of other men. Thus the Charter, as I understand it. Bocland then, I conceive, we may conclude alienable by the owner of it, both by act or grant in his life time, and at his death by will, in the times (I mean) before the Conquest. But afterwards that custom of devising it by will ceased, as did withall the descent of land generally, by equal division amongst all the sons. For, as the English Laws and Customes in general, from that time suffered a daily eclipse and declination by degrees, so this in particular (saving where they were more tenacious of it than elsewhere, and in such places, whereof y London seemeth to be one, as by special priviledge were suffered to keep it up) languished, and was at length supplanted by that other kind of descent, which now regularly takes place throughout the most part of the Kingdome. Infomuch as where this partible descent cannot, to uphold it self, justly plead antiquity and ancient custome, it quite fails, and falls to the ground. And to this passe (I take it) was it come in *Glanvill* and *Bractons* dayes, who therefore harmoniously deliver this as a requisite and essential property in land of such descent, that it be not onely by nature partible (as it is by being Socage, if we may interpret *Bractons si hæreditas partibilis sit*, by *Glanvills si fuerit Socagium*;) but withall, that by custome and of old it hath actually been parted. Now the Kentish men, it seems, the Commons there,

y See *Stowes Survey*, p. 535.

^z *Lamb. Per-
amb. pag. 546.
from Littleton.*

there, I mean, like the Londoners, more careful in those days how to maintain their issue for the present, than their houses for the future, (a contrary respect to theirs who have of late, by Act of Parliament, rid their lands of this Custome, as to that property of Partition) were more tenacious, tender and retentive of the present Custome, and more careful to continue it, than generally those of most other Shires were: not because (as some ^z give the reason) the younger be as good Gentlemen as the elder brethren, &c. (an argument proper perchance for the partible land in Wales) but because it was land, which by the nature of it, appertained not to the Gentry, but to the Yeomanry, whose name or house they cared not so much to uphold, by keeping the Inheritance to the elder brother. And thus at length, though 'tis like enough from small beginnings, (as many times great streams have but narrow fountains) it became so spread and diffused over all the County, that what was not Knight-service, but Socage-land, or of Socage Tenure, was in time (in Mr. *Lambards* phrase) apparrelled with the name, and (as may be added) qualified with the properties of *Gavelkynd*. And hence also it comes to passe, both that we very rarely, or never meet with any land there at this day, (other than Knight-service land) that is not of *Gavelkynd* nature, and of a partible descent, and that withall both our printed and manuscript Custumals, whether general or particular, use never a word of Socage Tenure, but of *Gavelkynders*, Tenants in *Gavelkynd*, Tenements of *Gavelkynd*, and such like, as Mr. *Lambard* observeth, pag. 544. And notwithstanding the ancient printed Custumal in *Tottell* claimeth

freedome onely to the bodies of the *Gavelkynders*, which may be the truer reading, yet Mr. *Lambards* may, especially at this day, passe well enough, by whose copy it is claimed as due to all the Kentish men in general, as, for the generality of the Commons, by common intendment, such at this day. But of these things hitherto. Yet ere I proceed to the next Proposition, let me discharge my self of a late promise for inquiry into the following Emergent:

Whether the Writ, De Rationabili parte bonorum, lie at the Common Law, or by Custome. See the Preface to the Reader.

THIS Writ is grounded and dependeth on a tripartite division of a mans personal estate, whether dying testate or intestate, and leaving behind him wife and children; as in case he leave onely a wife, and no children, or children onely and no wife, upon a bipartite. In the former of which cases, one third part of the goods belongeth to the widow, another to the children, and the third (called the Deaths-part) to the use of the Defunct, to be disposed either by himself, as he shall see good by his will, or for him, if he die intestate, by the Ordinary *in pios usus*. In the latter case, one moyety falleth to the widow, or to the children, (as the case shall be) and the other to the use of the dead, as before. In both cases, to the children of the deceased, each of them a rateable part, provided that such child be not his fathers heir, or were not otherwise advanced by him in his life time, unlesse haply (for hereof there is some question) waving that his

Hotchpot.

his former portion, he shall choose rather (as in the case of lands) to take the benefit of this partition by the way of *Hotchpot*, which is all one with the Civilians *Collatio bonorum*, or the Lombards *Missio in confusum*. See Dr. Cowell, and Sir Henry Spelman, in *Hotchpot*.

Now that there was any certain, or definite part or portion of the deceaseds goods or estate, (whether real or personal) any *Quota pars*, or *Legitima*, as the Civilians term it, by any custome here nationally observed, due to the widow or children in the Saxon times, doth not (that I can find) appear by any Law or other monument of theirs now extant. The plainest and most visible footsteps of that tripartite division or partition by this Writ intended, appear in that remarkable place of venerable *Bedes Ecclesiastical History*, lib 5. cap. 13. where we read of one, who, Testator-like, disposing of his substance or estate, *Omnem, quam possederat substantiam, in tres divisit portiones. E quibus unam coniugi, alteram filiis tradidit, tertiam sibiipso retentans, statim pauperibus distribuit*. The Saxon reading hath it more for our purpose thus: "Ealle his
 " æhto on ðreo to bæle. æne bæ he his wif
 " realde. oþerne his bearnum. ðone ðriððan ðe
 " him zelamp. he inſtæpe ðearfum gebælde.
 Where mark, the third part is there said to belong to himself: " ðone ðriððan ðe him zelamp, &c. plainly insinuating that the other two as rightly appertained to his wife and children, each of them a third. But withall observe, that this is the act of an house-keeper in the Province or Region (as there called) of Northumberland: *Paterfamilias in regione Northanhymbrorum*, &c. so is he described;
 and

and such a testimony indeed it is as makes much (I confesse) for the antiquity of that Custome (of a tripartite division) yet surviving and currant in those Northern quarters of the Kingdome, but whether, in right construction, extensive any further, or concluding for a national custome in that particular, especially since traceable in few other parts or counties of the Realme, by any later or elder footsteps, I think may well be doubted. To proceed then, (for I intend to state and handle the point rather as an Historian, relating the matter of fact, than as a Disputant, arguing the case :) as for that Law or constitution of ^aKing *Edmund*, which some insist upon for the widows right to a moyety of the estate, if she have no issue, otherwise, in case of issue, and remaining sole, to the whole, that cleerly takes place onely *vigore contractus*, or by force of a precedent contract; the Law in that particular being ushered in with this ground, or supposition: *ȝif hit ȝpa ȝeȝonponð bið*, &c. i. e. if it shall be so mutually agreed or covenanted (before or upon the marriage.) Nor doth that Law of King *Canutus*, par. 2. cap. 68. conclude for more than this, namely, a partition of the estate amongst the wife, children, and nighest kinred, to be made *judicio Domini*, by the Lord (of the Soils) discretion, “*ȝpiþe ȝihte*, i. e. rightly, or according to right, and “*be þæp mæþe* “*ðe him to ȝebȝiȝe*, i. e. after the measure, rate, or proportion that to them belongeth, not determining or making any mention, what that right, that measure, or proportion is in certain, (not the widow and children each of them a third; for then where were the kinsfolks share?) but leaving it indefinite and undetermined, as what haply being ordered by

^aVid. *Spelman*.
Concil. tom. i.
p. 425.

^a Si quis intestatus obierit, liberi ejus hereditatem aequaliter dividant. Vid. Cl. Seldeni Not. ad Eadmer. pag. 184. c. 36.

^c al. jussit.

the Lords discretion, and that swayed and regulated by (that *optima legum interprete*) Custome, might vary with the place. Nor was any such partition currant here, in case there were a will, for what saith the Law? “*ȝif hpa cpydeleare of ȝirrum life ȝepite, &c. i. e.* If any one depart this life intestate, &c. implying *liberam testandi facultatem*, a free liberty to dispose otherwise by will: as doth also that Law of his Successour, the ^b Confessour, ratified and re-inforced by his Successour, the Conquerour, providing that the children of persons intestate shall equally divide the heritage. In which respect, and because by taking no notice of the widow, (as neither doth that other Law of *Canutus*, par. 2. cap. 75.) it tacitely seemeth to exclude her, I know not well what (much pertinent to the point in hand) can be concluded from that Law. And as not from this, so neither, I conceive, from that Law of King *Hen. 1.* cap. 1. because it concerns and speaks onely of the Kings own Barons and Tenants: [*Si quis Baronum vel hominum meorum infirmabitur, sicut ipse dabit vel dare^c disponet pecuniam suam ita datam esse concedo, quod si ipse praeventus vel armis vel infirmitate pecuniam non dederit nec dare disposuerit, uxor sua, sive liberi, aut parentes, aut legitimi homines ejus eam pro animâ ejus dividant sicut eis melius visum fuerit*] And is seemingly no national provision, no rule intended for the generality of the Subjects, the Communalty: or if it were, yet with such expresse full and free liberty (inconsistent with this Writ) given by it to the party to dispose of his estate by will at his pleasure, as tacitely was granted both by that forecited 68. Law of King *Canutus*, and that other of his

his Successour the Confessour, whereof also before. So that admitting, or supposing a will, the subsequent division or distribution (prescribed by that Law of *Hen. 1.*) took no place, as by consequence neither did that reasonable or rateable part intended by this Writ. Passing therefore hence, let us next (as next in order of time) consult (that Oracle of the Law) Judge *Glanvill*, living and writing in *Hen. 2.* dayes. He indeed, lib. 7. cap. 5. is expresse for this kind of tripartite division: *Cum quis* (saith he) *in infirmitate positus testamentum facere voluerit, si debitis non sit involutus, tunc omnes res ejus mobiles in tres partes dividuntur aequales. Quarum una debetur heredi, secunda uxori, tertia verò ipsi reservatur: de qua tertiâ liberam habet disponendi facultatem: verum si sine uxore decesserit, medietas ipsi reservatur.* And to the same purpose again, eod. lib. cap. 8. *Si post debitorum acquietationem aliquid residuum fuerit, tunc id quidem in tres partes dividetur modo prædicto* (he refers to the forecited fifth chapter) *Et de tertia parte suum ut dictum est faciat testamentum.* To which kind of tripartite division, he plainly seemeth to refer, and have respect afterwards, lib. 12. cap. 20. where he layes it down *in terminis*, as a thing *recepti juris*, warranted by the Custome of the Realme, that is the Common Law, saying: *De catallis autem* (these are the words of the Writ) *quæ fuerunt præfati R. præcipio quod ea omnia simul & in pace esse facias, ita quod inde nil amoveatur nec ad divisam suam faciendam, nec ad aliam rem faciendam, donec debita sua ex integro^d reddatur. Et de residuo post fiat rationabilis^e l. reddantur. divisa secundum consuetudinem terræ meæ.* Thus *Glanvill*, with whom unanimously concurr^e *Brac-*

ton ^e Vid. *Bract.* & *Flet.* p. 125.

ton and *Fleta*. Hence now many learned men conclude this tripartite division, and the Writ waiting thereupon, to be rather by or at the Common Law, than (as is thought by others, and those learned men also) by Custome, and that hereof *Magna Charta*, cap. 18. expressly taketh notice, in the *Salvo*, or Limitation at the end, thus Englished: *Saving to his wife and children their reasonable parts*. The Opponents, and such as take the contrary part, endeavour to elude this as a matter rather of Counsel than command. So (for example) Dr. Cowell, Instit. lib. 2. tit. 13. parag. 2. followed by Sir Edw. Coke, in the second part of his Institutes, pag. 33. who to assert his opinion in the negative, (his denial of the widow and childrens right to a *Reasonable Part* by the Common Law) thus there adds: *The nature of a saving regularly is, to save a former right, and not to give, or create a new, and therefore, where such a Custome is, that the Wife and Children shall have the Writ*, De rationabili parte bonorum, *this Statute saveth it. And this Writ doth not lie without a particular Custome, for the Writ in the Register is grounded upon a Custome, which (as hath been said) is saved by this Act.* But where going on he further adds, that *Bracton* was of the same opinion, quoting for it, (as ^f *Swinbourne* before him) that place of *Bracton*, fol. 61. a. [*Neque uxorem, neque liberos amplius capere de bonis defuncti patris vel viri mobilibus, quam fuerit eis specialiter relictum, nisi hoc sit de speciali gratia testatoris, utpote si bene meriti in ejus vita fuerint, &c.*] with submission, they are both of them mistaken: that which *Bracton* there delivers, being a plain exception, deviation and diversion from the general

^f Of Testaments, par. 3. parag. 16. fol. 112. b. and 133. a. where he is out in saying, that *Glanvill* took his ground from *Magna Charta*, which is impossible; *Glanvill* being dead long before: an error (it seems) occasioned by that marginal quotation, not *Glanvill's* own, but his that set him forth, or some others.

general rule by him (as by *Fleta* after him, *totidem verbis*) just before laid down, and taking place only in Cities, Burrows and the like, by particular custom of the place, as (amongst others, *ut quidam dicunt*, say they) in London, and that upon this double consideration, namely, first, the advancement of trading and traffique (the life of all Commonwealths, especially of Ilands) which would be much encouraged by this liberty left to the Merchant or Trades-man, to dispose of his labours and gettings, where and how he saw best; and secondly, the countenance of vertue, and discountenance of (her opposite) vice, when by a necessity laid upon the wife and children, to comply with the husband and father in such wayes, both of thrift and duty, as might win and wear his love, and consequently, make him willing to requite their merit, the vertuous should be rewarded, the vicious discarded: *Vix enim* (say they, *Bracton* and *Fleta* both) *inveniretur aliquis civis, qui in vita magnum questum faceret, si in morte sua cogeretur invitus bona sua relinquere pueris indoctis, & luxuriosis, & uxoribus male meritis: & ideo necessarium est valde, quod illis in hac parte libera facultas tribuatur. Per hoc enim tollet maleficio, animabit ad virtutem, & tam uxoribus quam liberis bene faciendi dabit occasionem, quod quidem non fieret, si se scirent indubitanter certam partem obtinere etiam sine testatoris voluntate.* And this (I take it) is the thing (the good of the Commonwealth, by the maintenance of traffique, much encouraged by the liberty of a free Devise) by *Glanvill*, though somewhat darkly, pointed at, lib. 11. cap. 11. where (acquainting us, that an Assise of Mortdancester lies not for
houses

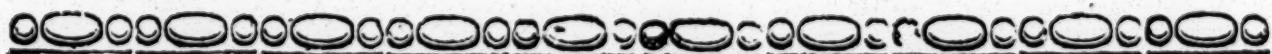
houses or tenements, [which are wont to passe *inter catalla* in Burrows, as *Bracton* and *Fleta* inform us] because of a greater commodity redounding to the Kingdome by another kind of Assise, an established course I suppose he means, warranting the liberty of a free Devise of such things, *tanquam catalla*) he saith: *Item ratione Burgagii cessare solet assisa per aliam assisam ex causa majoris utilitatis in regno constitutam.* But notwithstanding it were thus in London in those times, (when *Bracton* and *Fleta* wrote) yet afterwards it seems that custome (of a free and arbitrary Devise) ceased, and (haply upon those counter-grounds, or contrary considerations, brought and laid down against it by the same *Swinbourne*, fol. 113. a.) gave place to this kind of tripartite division: witnesse (besides Mr. *Lambard*, *Perambul.* pag. 561.) what in a book lately published, intituled the *City-law*, and said to be translated from an ancient French Manuscript, pag. 7. is delivered in these words: *And it is to be understood, that when a Citizen of the same City (London) hath a wife and children, and dies; all the goods and chattels of the said party deceased, after his debts be paid, shall be divided into three parts; whereof one shall remain to the dead, and shall be distributed for his souls benefit; and the other part shall be to his wife, and the third part to his children, to be equally shared between them; notwithstanding any will made to the contrary, &c.* But (to proceed) although *Glanvill*, *Bracton*, and *Fleta*, one and all, seem to conclude for this rule or order of Partition, to obtain and take place by the Common Law; yet, as this course did not long survive them, but, except where particular Custome (such as that where-

on the Writs in the Register are grounded) kept it up, at length grew into dis-use, in the case both of testate and intestate persons (witness on the one hand, the liberty time out of mind generally used at pleasure to dispose of personal estate made by will; and on the other, the Ordinaries well-known power of distribution of Intestates goods, which is not without warrant from that clause at th' end of *Magna Charta's* 18th chap. whereof in *Matthew Paris*, and elsewhere :) so with all these passages in *Glanvill*, *Bracton* and *Fleta*, are so inconsistent with what, in the case of testate persons, themselves with almost the same breath, deliver, that I know not how possibly to reconcile them. Whereof the former thus: *Potest enim quilibet homo liber majoribus debitis non involutus, de rebus suis in infirmitate sua rationabilem divisam facere sub hac forma secundum cujusdam patrie consuetudinem, quod Dominum suum primo de meliore & principaliore re quam habet recognoscat, deinde Ecclesiam, postea vero alias personas pro voluntate sua. Quicquid autem diversarum patriarum consuetudines super hoc teneant, secundum jura regni non tenetur quis in testamento suo alicui personae precipue nisi pro voluntate sua aliquid relinquere, libera enim dicitur esse cujusunque ultima voluntas, secundum has leges sicut & secundum alias leges.* The other two, to one effect thus: *Cuilibet autem sit licitum facere testamentum de rebus suis mobilibus & se moventibus, & quatenus superfu-erit deducto ere alieno, scilicet debitis aliorum, &c.* Thus, in mine opinion, do the same men more than seem to fight with, and contradict themselves, and how to set them agreed is past my skill. But indeed *vix tanti est*, 'tis not much material, since

Et si quis liber homo intestatus decesserit, per manus parentum & propinquorum & amicorum suorum, & per visum Ecclesie distribuatur, salvis unicuique debitis quae defunctus debuit: which in effect is the same with that of Bracton and Fleta: ad Ecclesiam & amicos pertinebit executio.

if

if we shall admit (what some eagerly contend for) this rule and order of partition to have sometime been by Law currant throughout the Realme, yet by general disusage and discontinuance, it is now, and that not lately, antiquated and vanished out of ure, both in this (of Kent) and other Counties, surviving onely (for ought I hear) in the Province of York, and some few Cities; and that it should ever be revived, at least in the case of testate persons, until first some way may, if possibly, be found, how to dissolve this knot, and remove this rub of flat repugnancie and disagreement of those ancient Authours (the vouched Patrons for it) with themselves in the point; I for my part, saving better judgement, see but little reason, and further than thus dare not in a case so controverted and canvased by learned and judicious Lawyers, interpose any judgement of my own.



PROPOSITION IV.

Whether GAVELKYND be a Tenure or a Custome.



It will not be amiss (I hope) to usher in the answer to this *Quære*, with some digression concerning Tenures. Facing then about, and looking back upon the times before the Conquest, inquire we out the Tenures (if I may so call them) then in use, and what other succeeded in their places afterwards at and since the Conquest.

Conquest. Here I expect it should be granted (for 'tis avouched I am sure by several^h men of credit) that before the Conquest we were not in this Kingdom acquainted with what since and to this day we call *Feoda*, Foreigners *Feuda*, i. e. *Fiefs*, or *Fees*, either in that general sence I mean wherein they are discoursed of and handled abroad in the Book thence intituled *De Feudis*, at home in that called *Littletons Tenures*, or in that particularly understood of us, when we treat or speak of Knights-Fee, which could not then be known here, when Knights themselves were not in being, as (saith a Record in the Cathedral of Canterbury, whereof moreⁱ anon) they were not till the Conquerours time. Or if in effect they were known to us, yet in terms certainly they were not: for the name of Fee, or *Feudum*, in this sence is no where to be found in any our Records or Monuments of those dayes now extant, and of credit, if my self and others have not been more unhappy to misse it, than indiligent to seek it. 'Tis true, it occurs in the fifth and sixth of the Laws ascribed to the Confessour, set forth by Mr. *Lambard*, in the *Varia lectio* there in the margent; but besides that the Text in each place reads it *Fundo*, those Laws, I take it, for the most part, especially as to their phrase, carry not that antiquity; but, like those of like kind in Scotland, ascribed to King *Malcolm* the^k second, and King *Alureds* will at the end of the Story of his life penned by *Asserius*, where the word several times occurs, favour of a later dresse. The like no doubt may as truly be said of that, *Qui in feodo suo*, in the old Latine Version of King *Edgars* Laws, following those in the original Saxon set forth in the late Edition of the Councils by

^h See Mr. *Seldens* Titles, 1. Edit. pag. 228, 273, 301. Illustrat. upon Polyolb. p. 208. Sir *Hen. Spelmans* Glossary, verb. *Feudum*.

ⁱ And in the Appendix, Scriptura 21.

^k Vid. *Spelm.* Glossar. verb. *Feudum*, pag. 258. col. 2. & verb. *Baro* pag. 81. col. 1.

¹ Histor. Croy-
land.

Sir *Henry Spelman*, pag. 446. And may we not upon this (amongst other grounds) question those Charters in ¹*Ingulphus*, thus far, I mean, as to doubt, whether many, if not the most of them, speak not another than that tongue in which they were originally penned, as being by the Authour, (though English born, yet afterward Normaniz'd, by conversing there some time, as a Retainer and Secretary to Duke *William*, afterward Conquerour, and King of England) whose Story is penned in Latine, the better to suit with it, taught to speak the Latine of his time, and late Masters native Countrey? upon this ground, I say, that amongst many other phrases scattered here and there, not in use with the Saxons, nor ever heard of here in England till about *Ingulphus* own time, (such as *Averia*, *Ballivus*, *Bedellus*, *Communa pastura*, *Iusticiarius*, *Forisfactura*, *Tenura*, *Weif*, *Stray*, with many more such like, which I forbear to name in this place) occurs *Feudum*. For example, in the Charter of *Witlaf*, the Mercian King, dated anno 833. we have it thus: & xl. acras de eodem feodo in campo de *Deping*. The like in a Charter of *Bertulph*, another Mercian King also, dated anno 860. and in some other of later date from succeeding Kings, we have — *de eodem feodo de Gerunthorpe*, and the like: whereas it may very justly be doubted, whether either the Laws, Stories, or other, either written or printed monuments of credit of any Nation or Countrey, can shew the word (*Feodum*, or *Feudum*) in use amongst them (but in stead thereof *Beneficium*, *Feodum*'s elder brother, or the like) until about that age, until (I mean) after the beginning of the tenth Century from our Saviours incarnation.

carnation. And hence give me leave, with *Buchelius*, in his Illustrations upon *Heda's* History of the Bishops of ^m Utrecht, to suspect that list or memorial, ⁿ *De vassis sive fide addictis Ecclesiae & Episcopo Trajectensi*, (as there it stands intituled) of *Heda* ascribed to *Adelboldus* the 19th Bishop of that See, who after he had sat 18 years, died in the year 1028. as indeed a piece unadvisedly referred to that time and place, and in all probability belonging to some Successour of his. But be that as it will, I see nothing however that may render us unsatisfied of the truth of their assertion, who say that the Conquerour brought, or introduced first into this Kingdome *Feudum*, *Feodum*, or (as in English) *Fee*, taken as it signifies Feudal services, especially military, (*prædium militare*) the sence in which, as it regularly occurs in the ^o Feudal books abroad, so constantly in Domesday-book here at home, for distinguishing the land from other there said to be holden *per gablum*, *ad firmam*, in *Alodio*, and other like Tenures there occurring: the Introducer borrowing (saith one ^p of my Authours) the term, (he might have added the Customes) from his own native countrey, Normandy, which he concludes from a passage of himself there quoted out of Domesday-book, thus speaking: — *In eodem feudo de W. Comite Radulfo de Limes' 50. carucat. terræ sicut fit in Normannia*: thus subjoyning: *Feudum & Normanniam jungit, ac si rei novæ notitia è Normannia disquirenda esset*. But with submission to better judgements, I question whether those words: *sicut fit in Normannia*, may not relate to *Carucatae terræ*, being an expression not used of ^q the Saxons for a Plough-land, (but *Aratrum*, *Sulinga*, *Hida*,
P 2 *Familia*,

^m Pag. 116.

ⁿ Pag. 111.

^o *Hotom.* de Feud. lib. 2. pag. 309. parag. ult. tit. 51.

^p *Spelman*, ubi supra.

^q *Annuaire Rege, omnes Carucatas, quas Angli Hidas vocant, funiculo mensus est: Order. Vital. Hist. Eccles. ad ann. 1089.*

' *Bacons Elements*, tract. 2.
p. 30.
' Chap. 1. Sect.
3. p. 16.

Familia, *Mansio*, *Mansa*, *Manens*, *Casata*, and the like terms of quantity) rather than to *Feudum*, from which too it is further distanced in the quotation than from the other. But to let that passe: to the Conquerour (it seems) it is, that the name and customs of our English Fees, or (as we now vulgarly call them) Tenures, such at least as are military, owe their introduction, whatsoever the ^r *Mirroir* (a book whose antiquity is too much cried up of some) hath to the contrary, as if *in terminis* known here in England in King *Alfreds* dayes, by whom (as the Authour there pretends) it was ordained that Knights-Fee should descend and fall to the eldest, and Socage among all the sons: whereas in very deed we knew neither one nor t'other in those dayes, they with the rest since and at this day called *Fee-simple*, *Fee-taile*, *Fee-ferme*, *Frank-fee*, as also *Grand* and *Petite Serjeanty*, *Escuage*, *Burgage*, *Villenage*, and the rest, in the book of Tenures and elsewhere obvious, being all of the Norman plantation, and we by them, at least since their Conquest of us, brought acquainted with them, not knowing what Fee (in that notion) meant before, nor being to this day agreed among our selves, as neither are the Feudists and other writers on that argument in other parts, upon the etymologie and derivation, either of that or the word whereunto it is opposed, *Allodium*; wherein indeed Authours of several sorts, Lawyers I mean, Etymologists and Antiquaries so much differ and disagree, as that the further we wade in the research of their opinions in that kind, the more uncertain still we come off, and the further we are from (the end of our inquiry) satisfaction. However, I will on this occasion adventure

venture to offer my sence, which, if well considered, may perhaps help to end the difference.

Not to repeat that variety of other mens opinions in the point, of which some, and those the most, and with most general applause and acceptation, fetch the former (*Feudum*) from *Fides*; others from *Faida*, or *Feida* (*bellum*) a third from *Fædus*: a fourth from the German *Feuden*, *quasi a fungendo*, i. e. *pascendo*, or (as ^t *Gryphiander* hath it) from the Saxon *Foden*, i. e. *nutrire*: to let these derivations all passe without any further repetition, as obvious enough in the writings of the Feudists and elsewhere, especially (with some additions of his own) in *Martinius Lexicon-Philologicum*: as likewise not to repeat the like variety amongst them, (as obvious as the other) concerning the latter, (*Allodium*) and *Allodium*. which some will have to be a derivative from *à*, the privative particle, and *Laudium*, or *Laudatio*, as a possession acknowledging no Authour, no Lord of the Soil, but God alone; others from that privative particle, and *Lodes*, *quasi sine Lode*, that is, *sine vassallo*, as a mad man is called *amens*, to say, *sine mente*, as whose possessour is no Vassal, whilest a third sort fetch it from *Alsleud*, as we should say, possessions common (i. e. such as may freely be given or sold) to all or any of the people, the many: like in this (say some) to what of old we here in England called *Folcland*, by which (but how properly, since *Folcland* is parallel'd with what sithence we call ^u *Copy-hold*, may well be doubted) they are found to illustrate it, contrary to a fourth derivation of others, who hold it inseparable from the family, and thence of the Germans called *Ein Anlod*. A fifth sort there is, that draw it from the
foresaid

Feudum derived.

^t De Weichbild. Saxon. cap. 49. num. 8.

^u *Cowells Interpreter*, & *West*, *Symbolog. par.* 1. lib. 2. sect. 603.

foresaid privative particle *à*, and *Leod* (in French *Leud*) a Vassal, as it were, without vassallage, or without burthen, which we English men (saith my Authour rightly) at this day call *Loade*: not further, I say, to trouble the Reader with either any longer repetition of these and the like (for there are some other) various opinions of this kind, or any Catalogue of the severall Authours of them, I will, as I promised, offer my conjecture at each words etymologie, with submission of it to better judgements.

In short then I say, that each of the two words in its original, which is German, is a compound consisting of two syllables, of which two, the latter (to begin with that) I conceive to be the same in both, and is no other than what is borrowed towards the composition of many severall words of the same original, used and continued both in those, especially the Teutonic parts, and also here in this Iland, from the time of the Saxons settling here, down unto this day, though with some little variation of the Dialect, occasioned by tract of time bringing its corruptions, and the intermixture of other languages: and that is with us *hade*, *head*, *hode*, with the Teutonics *heyd*, and *heit*, sometime *bat*, betokening in each place (as *dome*, and *ship*, anciently written *scip*, in the terminations of many of our words:) a quality, kind, condition, state, sort, nature, property, and the like. Hence the military, masculine, feminine, childish, paternal, maternal, fraternal, sisterly, desolate, presbyterial, neighbourly, quality, nature, kind, condition, &c. of a Knight, a Man, a Woman, a Child, a Father, a Mother, a Brother, a Sister, a Widow, a Priest, a Neighbour, &c. is termed *Knight-hode*, *Manhode*, *Woman-*

Womanhode, Childhode, Fatherhode, Motherhode, Brotherhode, Sisterhode, Widowhode, Priesthode, Neighbourhode, &c. The quality, nature, existence, of the Deity is stiled *Godhead* with us, with our Ancestours, the English Saxons (who wrote and had that *hade*, which we since write and have *hode* and *hood*) *Godhade*. *Head* in Maidenhead owes it self to the same original, denoting out the virgin-condition, or maiden-quality of the party. *Hood* in Livelyhood is also sprung from the same root, whereby a mans state of subsistence is signified: and the like may be said of *hood*, in Falshood, Likelyhood, and a many words more of like termination, as expressing and setting forth in the one, the false in the other, the probable, likely, condition of the thing predicated. This may also help us in the etymologie of what we use to call *Feud*, or *Deadly Feud*, our Ancestours, the Saxons *ƿæhð*, the Germans *Fhede, Feide, and Faide*, which in truth is but a compound of their *Fah*, i. e. *Hostis, Inimicus*, as we say at this day a *Foe*, and *hode, hade, head, heyt, &c.* i. e. *conditio, status, qualitas, &c.* together importing the condition of enmity in the person who bears it. I could here enlarge with instances of very many Teutonic words thus terminating, I mean, in their Dialect with *heyd, heit*, and the like, and by such their terminations predicating, as is said before, a quality, condition, &c. such as *Allenheyd, Felheyd, Fijnigheyd, Hebbelickheyd, Heyligheyd, Maeghdelickheyd*, and numbers more obvious in every page of *Kilianus Dictionarium Teutonico-Latinum*, and elsewhere; but I fear to be tedious.

Feud (in *Deadly Feud*) derived.

Seeing

* Saxon Gospels, Matt. 25. 18, 27. also chap. 28. 12, 15. & *Verste-gan*, pag. 218.

† Vide tit. Feud. 1. t. 1. De his qui feudum dare possunt. *Spelm.* Gloss. verb. *Felonia*, p. 253. *Cowells* Interpret. verb. *Fee*.
 ‡ Biblioth. Cluniac. pag. 1390. & *Cujac.* de Feud. lib. 3. tit. 1.
 * Verb. *Felonia*.
 † *Vulteius* de Feud. lib. 1. cap. 1. num. 14.
 ‡ *Kilian.* Diction. verb. *Leen*, & Dr. *Zouch*, Descript. jur. temporalis, sect. 7.

Seeing now what the latter syllable in *Feudum* and *Allodium*, in their several originals, signifieth; and having taken the words thus asunder, let us next consider of the other part of the composition, their former syllables, which in *Feudum* (the former) is *Feh*, *Feo*, or *Feoh*, signifying as * *Pecunia* in the general, so more peculiarly a *Salary*, *Stipend*, *Wages*, intended of us when we say: *Officers live by their Fees*; whilest in the other, *Allodium*, the former syllable rightly written, is *All*, *Al*, or (as with the Saxons) *eal*. Put we now the syllables together again, and then the former will come forth *Feo-hode*, *Feh-hode*, or the like; the latter, *All-hode*, and that most appositely, if applied to the Feudists *Feudum* and *Allodium*, considered in their originations and primitive acceptions. The former of which when first † instituted, was but personal, not, as afterward, perpetual, patrimonial, hereditary, or holden (in *Glanvill* and *Bractons* phrase) *ad remanentiam*, but as a Clergy-man holds his Benefice, (hence in some ancient ‡ Charters called *Feodum*) onely for life; the Tenant being but a meer Stipendiary, a Termer, at best but a Freeholder for life, *Usufructuarius*, and indeed some were not so much, but held onely (as our learned † Glossarist hath it) *ad voluntatem Domini*, as ‡ others, *precario*, not unlike our Tenants at will since and at this day: the land was onely lent, as the German term for it † (*Lehen*) seems to intimate. In proceſſe of time, degenerating and receding from their first institution, they became perpetual and hereditary, yet holden, as formerly, with a condition of service on the Tenants part, and *stipendii loco & nomine* on the Lords; by way (as it were) of Salary, Pension, or Stipend from the

the Lord, to gratifie and recompence his man with-
all for such his service, to which he was obliged
under peril of forfeiſture by the withdrawing there-
of. I dare not add in conſideration of Fealty or
Homage, (in thoſe times) ſince, though that acknow-
ledgement in the Feudal Law, of ſome Fee tenable
without an oath of ^d Fealty be indeed juſtly taxed
for a paradox of ſuch who will have Fee to come
of *Fides*, (whence haply our legal maxime, that all
Tenures regularly are liable to Fealty :) yet might
Fee, by this derivation of it, ſtand with Fealty, and
the Tenants of it be called ^e *Fideles feudales* with-
out a ſolœciſme; a good argument for the deriva-
tion of it thus, rather than from *Fides*, as of more
ſcope, and more conſiſtent with Fee of all ſorts than
that other derivation doth allow. Fees, I ſay, were
holden but in ſervice, *nomine quaſi alieno*, the *Do-
minium*, that at leaſt of Lawyers called *directum*,
(though the *utile* were transferred on the Tenant :)
the propriety, I mean, remaining and abiding ſtill in
the Lord, together with a power of reſtraining his
Tenant from alienation, and conſequently ſuch land
was but partially, conditionally, not totally and ab-
ſolutely, granted out. Contrariwiſe, that which
was termed, in oppoſition to it, *Allodium*, as it was
hereditary, perpetual, and patrimonial, ſo was it
ſans all condition, free, and in the power of the
poſſeſſour to diſpoſe of it *ad libitum*, how he pleaſ-
ed, either by gift or ſale, without asking any man
leave: and as it was hereditary, perpetual, patrimo-
nial, and free land, ſo was it withall poſſeſſed totally
and wholly, not as our land generally in this King-
dome in Subjects hands at this day ſaid to be hold-
en *in Dominico ſuo ut de feodo*, as our Lawyers
Q phrase

^d Vid. *Hotoman.*
de Feud. lib. 2.
tit. 3. parag. 4.

^e Vid. *Spelm.*
Gloſſar. verb.
Fideles.

^f De Gest. Pontif. lib. 1.
^g Hist. Novor. l. 1. p. 18. Vid. Dr. Zouch, Descript. jur. temporal. sect. 5.

^h Spelm. Glossar. verb. *Allo-*
dium.

ⁱ As in *Hundii* Metropol. Salisbury. Bibliothec. Cluniac. & Præmonstrat. Hist. Ultraject. & *Miræi* Cod. Donatio, &c.

phrase it, but rather in *Dominico suo ut de jure*, (the owner having *Dominium* both *directum* and *utile* :) or in the Feudists phrase, and after their unanimous, harmonious definition of it, *pleno jure; integre; ex toto; or ex solido*, as ^f *Malmesbury* hath that which ^g *Eadmerus* expresseth by in *Alodium*, quit of all services, like Frankalmoigne, whereunto Mr. *Selden* there in that respect resembles it. I may call it *absolutely, immediately*, or (if you will) *independently*, without acknowledgement of any superiour Lord, not unlike the Prince of Haynault, holding onely (saith my ^h Authour) *de Deo & Sole*, or, as other absolute Princes, *Gratiâ Dei*, in a word, in totality : whence the terms of *prædia immunia, terra propria, fundus proprii juris, patrimonium*, in ⁱ Charters and elsewhere given to such possessions. Probably, land of this nature was the same with our *Bocland*, which I sometime find in the Latine rendring of some Saxon pieces turned by it : (hence a hint to judge of the one by the other :) for what in the 11th Chapter of the first part of King *Cnutes* Laws is read *Bocland*: *Ea hpa þonne þegen rý. þe on hýr boclande cýpicean hæbbe, &c.* and in the old Latine version of it in the Kings Ms. and *Jornalensis*, is turned *hæreditas : Si quis Tainus in hæreditate sua terram* (it should be *Ecclesiam*) *habeat, &c.* in another like old version in the book of Rochester called *Textus Roffensis*, is rendred *Alodium : Si liberalis homo quem Angli Thegen vocant, habet in Alodio suo Ecclesiam, &c.* By *Allo-*
dium also is turned in the same Record (*Textus Roffensis*) what occurs in the Saxon fragment exhibited by Mr. *Lambard*, *Perambulat. in Mepham, pag. 500.* under the term of *agenerland*: *Et si vil-*
lanus

lanus ita crevisset sua probitate, quod pleniter haberet quinque hidas de suo proprio Alodio, &c. Alodium, it seems thence, being properly such land as is fully a mans own. Shortly then, *Feudum*, *Fee*, or land holden in Fee, is no more (considered in its first and primary acception, to which they must have regard that will hope to judge aright of the ground for the first imposition of the name :) than what was holden in *Fee-hode*, by contraction *Feud*, or *Feod*, i. e. in a stipendiary, conditional, mercenary, mediate way and nature, and with the acknowledgement of a superiour Lord, and a condition of returning him some service for it, upon the withdrawing whereof the land was revertible unto the Lord : in which respect, as the grant thereof is improperly called a Donation, being but *Feodalis dimissio*, i. e. a Demise in Fee, so the Deed or Conveyance by which it was demised, is as improperly termed a Charter of Donation, being no more than a Charter or Deed of Feoffment. Such, I say, is *Feudum*. *Allodium* is contrary wise what is holden in *All-hode*, in totality, in a totall, full, absolute, immediate manner and condition, without acknowledgement of any superiour Lord, and free from any tie or compact for the returning any service at all for it unto any. Thus far (and I hope not too far, nor impertinently) for cleering the etymon of *Feudum* and *Allodium*, as the argument, so the torture of many learned pens, amongst whose derivations of one and t'other, I humbly crave this of mine (such as it is) may be admitted for future Indagatours, and all others of unforestalled judgments freely to consider of.

* Vid. *Fleta*,
lib. 3. cap. 2.
parag. 4.

¹ Verbo Feudum.

^m Lambard, in verb. explicat. verb. Terra ex scripto.

ⁿ In Armar. ejusd. ecclesiæ.

And now to spin on our former thred, and to reassume our argument of the Introduction of our Fees or Tenures by the Conquerour, which that etymon coming in the way caused me a while to set aside: I here professe to concurr with them, who upon the question put, resolve it in the affirmative, whereof our learned ¹ Glossarist, for one, thus: *Feodorum servitutes in Britanniam nostram primus invexit Guilielmus senior, Conquestor nuncupatus, &c.* and a little after: *Deinceps verò resonarunt omnia feodorum gravaminibus Saxonum ævo ne auditis quidem:* no other Tenures, or, in the Scottish expression, *Haldings of land*, being formerly here in use but these two, *Bocland*, and *Folcland*; *The one* (saith my ^m Authour) *a possession by writing, the other without. That by writing* (so he adds) *was a freehold, and by charter; hereditary, with all immunities, and for the free and nobler sort. That without writing was to hold at the will of the Lord, bound to rents and services, and was for the rurall people.* It may be added, that the former took name from the lands *booking*, or *entring* (with the limits of it) in a Codicil, (as then called) a little book, or (as we since call it) a Charter, which if the land were given to a Lay-man, was in way of Seizin delivered to the party that was to have the land, (hence haply that ceremony we retain of delivering a Conveyance as the parties Act and Deed) or, (if to a Monastery) laid and left most commonly upon the Altar: *Ego autem licentiâ & consensu illius, testimonioque Episcoporum & Optimatum suorum, omnes terras meas, & libros terrarum propria manu mea posui super altare Christi in Dorobernia, &c.* as it is in the close of a ⁿ Memorial of the gift of Monkton

ton and other manours to the Church of Canterbury, in the year 961, by Queen *Edive*, or *Edith*, whose picture, in thankful remembrance, was until of late reserved in that Churches Treasury. Hence was such a Charter vulgarly known in those times by the name of ° a *Landboc*, in the Latine of the times *Telligraphum*, sometime *Codicillus*, and the like. Observe yet further, *terram hæreditario jure conscribere, & liberam proclamare*, (the Latine phrase for creating *Bocland*) was a prerogative royal, or a Royalty, and out of the power of any Subject, whence that passage often occurring in Subjects grants of lands in perpetuity to the forenamed Cathedral, and other places, *viz.* and such a one King, hit geboked on ece ypre, i.e. *hæreditario jure conscripsit*, as also that: *liberam omninò proclamavit*, and such like. King *Ethelreds* priviledge (as called) confirming to that Cathedral (amongst other things) their whole possessions, is hence by p one of the Subscribers called, cýninger bocunge. But notwithstanding this Enfranchisement, the land was very seldome alienated by the possessour in Frankalmoigne, without (what the Law of 9 Mortmaine afterward required) a concurrent, or at least a subsequent confirmation from the King, whereof examples are obvious in the list of that Churches lands and benefactours, published in the Antiquities of Canterbury, pag. 210. as also of the concurrence of the Magnates, or Nobles, in such *Bocland*-grants, principally in that of Mallings. You shall have the very words, because remarkable: *Anno Domini DCCCxxxviij. Ecgbertus & Athelwulfus Rex filius ejus dederunt Ecclesiæ Christi in Dorobernia Mallings in Suthsexan, quod viz. manerium prius eidem Ecclesiæ*

° See Scriptur.
20. in the Appendix, and
Spelm. Glossary.

Vide Spelm.
pag. 319, 333.
& Bed. Hist.
Ecclef. Anglo-Saxon. lib. 3.
c. 24. & Chronolog. Sax. anno 854.
p Spelm. Concil. p. 507.

9 Anno 9.
Hen. 3. c. 36.
& anno 7. Ed.
1. Vide Customar. Norman. cap. 32.

Ecclesiæ dedit Baldredus Rex, sed quia (mark this) *non fuit de consensu magnatum regni, donum id non potuit valere. Et ideo, &c.* *Bocland* thus flowing originally from the Crown, upon all forfeitures, and particularly that of the estate of the possessor, for deserting the wars, as if there were no mean between the King and him, the King alone was to take the forfeit. But of *Bocland* more anon.

* L.L. *Ethelr.*
par. c. 2. & L.L.
Canut. par. 2.
cap. 75.
Gafolland,]

Neatland.
Inland.
Utlund.

Some other kinds of land ('tis true) there were in those dayes, but all (I take it) reducible to the precedent Dichotomy, such as, 1 *Gafolland*: butan ðæm ceople þe on gafollande ƿiτ, as it is in the truce or agreement between *Alfred* and *Guthrun* KK. in the *Archæion*, cap. 2. 2 *Neatland*. 3 *Inland*: ægþer of ðeƷner inland. Ʒe of neatland. so runs the first chapter of King *Edgars* Laws there. 4 *Utlund*: to pulƷeƷe þ inland, and ElƷeƷe þ utland. as we have it in the will of *Byrhtic* in our Kentish Perambulation, pag. 495. Of which four, the two former, I conceive, were but the same with *Folcland*; both one and t'other importing land letten or demised, as *Folcland* was, to rural people, more *Emphiteutico*, for profit: the one from *Gable*, or *Gafol*, i. e. Cens, or Rent, being termed *Gafolland*; the other called *Neatland*, either from nýtτian, to improve, fructifie, whence nýðling for a Foenerator, a Usurer, nýtnerƷe, profit, nýtta, profitable, unnýtta, unprofitable, unthrifty, or else (which I rather think) from Ʒeneat, *Villanus*, *Colonus*, as the old Version of the 19th and 21th of K. *Ina's* Laws renders the word, which comes all to one with *Ceorliscus* spoken of in that second Chapter of the *Fædus Aluredi, & Guthruni, Regum*, and there described by his quality to be one that occu-

pieth ¹ *Gafolland*. As for the remaining two, *Inland*, *Utland*, the former was *terra dominicalis*, land holden in Demesne, in the owners own hands, (and for the most part designed *in mensam Domini*, whence otherwise stiled in succeeding times *Bordland*, like the Civilians and Canonists *bona ad mensam*) and in this respect may not unfitly be referred to *Bocland*, regularly of like property. The latter contrariwise, like *Gafolland*, and *Neatland*, was land letten out, and, in opposition to Demesne land, termed *in servitio*, or *tenementalis*, that is, granted out in service by the Lord to his Tenants, to be holden of himself, and so we may parallel it, as with *Gafolland* and *Neatland*, so with *Folcland*, being of the same nature: like the Frenchmans *Fief servant*, i. e. *terra serviens*, in respect whereof the Tenants were bound to be Retainers, Attendants and Followers to their Lords, Suitors to their Courts, and were thence called (in the term of *Hen. 1. Laws*, taken up afterwards of ¹ *Bracton*) *Folgarii*, concerning which see further in Sir *Hen. Spelmans* Glossary, verb. *Folgare*, & *Felgarii*, as also in the Laws of King *Knute*, par. 2. cap. 19.

¹ Such (haply) as that in a very ancient Deed¹ in Christ Church, called *Terra rusticorum*. It occurs in a Charter of *Amfridus de Dene*, of lands in Fairfield, made about *Hen. 3.* time. To which may be added what occurs in a Charter of *Hubert* the Archbishop to the Priory of *S. Gregories* by Canterbury, viz. *De decimis Militum & Rusticorum*, &c.

¹ LL. *Hen. 1.* cap. 8. *Bracton*, lib. 3. tract. 2. cap. 10.

Besides these sorts of land, after ages (since the Conquest) produced many other, such as, *Work-land*, *Cot-land*, *Aver-land*, *Drof-land*, *Swilling-land*, *Mol-land*, *Ber-land*, *Smiths-land*, *Ware-land*, *Terra Sussanna*, *For-land*, *Bord-land*, and such like. Of each of which (for some satisfaction to the inquisitive) in a word or two.

The first (*Work-land*) is land of a servile nature and condition, *terra servilis*, as I find it called, as also (what indeed the word soundeth) *terra operaria*, because haply at the creation of the manour, and distribution

Work-land.

distribution of it into parcels, charged with servile works, such as plowing and harrowing the Lords arable ground, mowing, tassing and carrying in his hay, sowing, weeding, reaping, and inning his corn, making and mending his fences, thatching his barns, and such like; charged (I say) with servile works, and not with Cens or Rent, or if also with rent, yet of the twain more especially with works, and therefore contradistinct, and opposite to *Gavelland*, which was land liable to Cens or Rent, or if also to works, yet chiefly to rent; both one and t'other being denominated from what was the more eminent service arising from them. Hereof some footsteps visible in the 66. of King *Ina's* Laws.

Cot-land.

The second (*Cot-land*) that belonging unto, and occupied by the *Cotarii*, *Cotseti*, or *Cotmanni*, a sort of base Tenants, so called from certain Cotes, or Cottages, small sheds like sheep-cotes, with some little modicum or parcel of land adjoyning, originally assigned out unto them in respect and recompence of their undergoing such like servile works, or baser services for their Lords, as before expressed.

Aver-land.

The third (*Aver-land*) much the same with that before called *Work-land*, coming of the French *Ouvrer*, to work, or labour, but chiefly differing from that in this particular, that the services thereof consisted especially in carriages, as of the Lords corn into the Barn, to Markets, Fairs, and elsewhere, or of his domestick utensils or household-provision from one place to another, which service was of diverse kinds, sometimes by horse, thence called *Horse-average*, otherwhile by foot, thence termed *Foot-average*; one while within the precinct of the manour,

Horse-average.

Foot-average.

nour, thence named *In-average*, another while without, and then called *Out-average*; the Tenant in the mean while being known by the name of *Avermannus*.

The fourth (*Drof-land*) that holden by the service of driving, as well of Distresses taken for the Lords use, as of the Lords cattel from place to place, as to and from Markets, Fairs, and the like: more particularly here in Kent of driving the Lords hogs or swine to and from the Weald of Kent, and the Dens there, thence called of old *Drofdens*, namely from the droves of hogs sent thither, and there fed and fatted with mast, or pawnage; the Driver whereof was vulgarly called *Drofmannus*.

The fifth (*Swilling-land*) that let out or occupied by *Swillings*, *Swollings*, or *Sullings*, that is, Ploughlands, coming of the Saxon *jul*, a Plough, (in which notion the word may extend to all arable land) the quantity whereof was various and uncertain, conteining more or lesse according to the nature of the land, a Plough being able to master a greater or lesser quantity, thereafter as it is in quality. This (of *Swillings*) I find to be a word proper to the Kentish, even from the Conquerours time, (to look no higher) whose Survey (commonly called Domesday-book) shews *Suling* (and the like) to have been a term in those dayes peculiar to this County, whereby to expresse the quantity of their land, whilest Hide, and the like was of like use elsewhere. To this head may be referred *Hide-land*, *Yoke-land*, *Aker-land*, *Rod-land*, and the like, being quantities or portions of land let out and occupied by the Hide, Yoke, Aker, Rod, &c. and denominated accordingly.

Mol-land.

The sixth (*Mol-land*) was the same with *Up-land*, of the Saxons called *Dunland*, standing in opposition to Meadow-land, Mershland, or Low-land; the Tenant whereof was wont to be called *Molmannus*: the word (as I conceive) being derivable from the Latine *Moles*, a heap, of which see further in the Surveyours Dialogue. Hence probably the name of that place in Ash (the seat and patrimony at this day, and from good antiquity, of the *Harflets*, formerly of the *Septvans*, families both in their time adorned with Knight-hood) called *Molland*, being of an advantageous situation for the overlooking of a large level of a rich Mershland.

Ber-land.

The seventh (*Ber-land*) that which was held by the service of bearing, or carrying the Lords or his Stewards provisions of victual or the like, in their remove from place to place, such Tenant being thence called *Bermannus*.

Smiths-land.

The eighth (*Smiths-land*) that, in respect whereof the Tenant was bound, as to undergo the Smiths or Farriers office and work, in and about shooing his Lords horses and carriages, so also to find and furnish him with materials (of iron) for that purpose.

Ware-land.

The ninth (*Ware-land*) the same that otherwise called in the Latine of the times, *Terra warectata*, or *Terra jacens ad warectam*, that is land lying, or suffered to lie fallow, coming from the French *Garé*, (their *g* here, as in many other words, being turned into our *w*) whence with them *Terre garée*, for old fallow-ground.

Terra susanna.

The tenth (*Terra susanna*) land, not much unlike unto, if not the same with the former, being superannated land, or land with over much tillage worn

worn and beaten out of state, and therefore of necessity lying over year, and being converted from tillage to pasture, until it may recover state, and be fit for tillage again, the term or denomination coming from the French *Susanné*, signifying stale, grown old, past the best, or overworn with years.

The eleventh (*For-land*) the same (I take it) that we otherwise use to call *Fore-aker*, whereof see more in Sir *Henry Spelmans* Glossary, verb. *Forera*. For-land.

The twelfth and last (*Bord-land*) that holden and occupied by the *Bordarii*, or *Bordmanni*, the same (I take it) with the French *Bordiers*, i. e. Villeins or Cottagers, such as hold by a servile, base, and drudging Tenure, of them called *Bordage*. You may read both of the one and the other in the old grand Customier of Normandy, cap. 53. Within the signification of the word (*Bordland*) are comprehended also (as is already hinted in this chapter) lands holden in Demesne (of the Saxons termed Inland) and designed to the furnishing of the Lords boord or table, and the maintenance of him and his family in victual. For which see *Bracton*, lib. 4. tract. 3. cap. 9. num. 5. Which kind of land the Saxons used to call *Foster-land*, *quasi* fostering land, that is land *ad victum*, a term obvious and very frequent with the religious men of those dayes, who as they had their special Firms and portions of land assigned them *ad victum*, so had they other as peculiar to their clothing or apparelling, land *ad vestitum*, which, from the Saxon *ycpuð*, *vestis*, or *vestimentum*, they called *Scrud-land*. They had withall their *Sextary-land*, which was such as appertained to the office, and was intrusted to the care of the

Bord-land.

Vide *Fletam*,
lib. 5. cap. 5.
parag. 18.
Foster-land.

Scrud-land.

Sextary-land.

Almesland.

Sacrist or Sexton, and was designed chiefly to the upholding and maintenance of their Church or Temple, both in the Fabrick and Ornaments. Besides all these, they had their *Almesland*, which was that appropriate to their Almshouse, a parcel or place of the Monastery set apart for harbour and relief to such poor people (for the most part) as were allied, or otherwise related to the Monks.

Over-land.

I may not here omit *Over-land*, a name attributed to such land as lieth by or along a Rivers side, and coming of the Saxon oþer, i. e. *margo*, the bank of a River: whence that known places name lying by London, alongst the Thames-side, called *St. Mary Overies*: compounded of the aforesaid *Over*, and *Ree*, betokening a River, or Current of water. Land of this name we have at or neer Ash in Kent, alongst the Stour-side, running to Sandwich Town and Haven.

Monday-land.

I might to these add *Monday-land*, and the like, which with it fellows, borrowed denomination from this or that week day, and that in respect of the Tenants obligation to such or such servile works or services, upon such or such dayes of the week, in respect of that land. But I purpose to digresse no longer, having for brevity sake, wittingly omitted the quotation of the places where these several names occur, which otherwise I should willingly have added, and shall onely in the Appendix, Scriptura 23. present the Reader with a copy of a Saxon charter making mention of those two, *Fosterland* and *Scrudland*, as somewhat more remarkable than the rest.

Now returning to our *Bocland*, you must know, that notwithstanding that introduction of new Tenures

nures by the Conquerour, we did not streightway forgo our *Bocland*, that kind of Tenure I mean, but reteined it both name and thing, witnesse first what occurs in " a Deed sans date of certain messuages, by *Roger*, son of *John*, Alderman of *Radingate* in *Canterbury*, granted in *Frankalmoigne* to *St. Laurence* Hospital neer the city, founded by *Hugh*, of that name the second, Abbat of *St. Augustines* there in the year 1137. viz. *Duo messuagia quæ sita sunt in terra de Bocland, de qua nulli respondeo, &c.* where we have not onely *Bocland* mentioned, but the nature of it also in part set forth. Witnesse also another passage to the same effect in a like ancient * charter to the Church of *Canterbury*, for the grant of a parcel of land lying without the wals of the city, between *Queningate* and *Burgate*, running thus: *Volo autem ut monachi teneant terram illam omnino liberam, sicut ego & antecessores mei, & nemini inde respondeant.* Witnesse lastly, *Domesday-book* it self, where though haply not the name of it, (as neither of *Folcland*, Saxon terms both) yet the thing, to my apprehension, is very obvious and often occurring under the name and notion sometime of *Tainland*, otherwhile (and I think more often) of *Allodium*. Hence the phrase (for the former) of *clamare ad Tainland*; of *tenere in Alodio*, for the other: both taken up (as I conceive) in opposition to *Fee*; but the former so termed, because indeed *Bocland*, or *Alodium*, was properly tenable by *Thanes*, (hence in the eleventh chapter of King *Cnutes* Laws, par. 1. *Thegn* and *Bocland* in the original Saxon, as *Thegen* and *Allodium* in the Latine version in *Textus Roffensis*, meet as relatives :) not but that it

was

" In lib. Hosp.
S. Laurentii
propè Cantuar.

* In Archiv.
Eccles. Cant.

† Vide Cl. Sel-
deni Notas ad
Eadmer. pag.
170.

was sometime held by *Ceorles*, as who were not incapable of holding it, (witnesse the old version of the Saxon Fragment in Mr. *Lambard*, whereof before :) but when so, as improperly there, and as much out of place as Knights-Fee (proper to Knights and the nobler sort of people) were in this Kingdome since and at this day in Socagers hands, or in the hands of Sockmen, whose proper tenure was that of *Gafolland*: butan ðæm Ceople þe on ȝafollanð ȝit, as you have it before.

Bocland in Can-
terbury.

I have often much wondred with my self, whence it should come to passe, that diverse of our Canterbury houses and ground at this day pay no Quitrent at all, which others in the same place, though holden in Free Burgage are known to do. But considering afterwards with my self, that *Bocland* often occurs in *Landbocs* (as they were called) of the place in the Saxons time, I at length concluded, at least conceived, such houses and ground to be the remains of our ancient *Bocland*, which seemeth to be still surviving in them, as if holden in *Allodium*, *pleno jure*, without all manner of chargeable service, and no other (probably) than part of those eighty acres of land (or the like) in Canterburies Survey in Domesday-book thus expressed: *Habet etiam* ('tis spoken of *Ranulfus de Columbers*) *quater viginti acras terræ super hæc quas tenebant Burgenses in Alodio* (so I read it, rather than *Alodia*) *de Rege*, or, as a very ancient book sometimes of St. *Augustines* Abbey, now with the Kings Remembrancer in the Exchequer reads it: *Item dicunt Burgenses quod idem Ranulfus tenet quatuor viginti agros de Allodiis eorum, &c.* The same Domesday-book (to prosecute this discourse

course of *Allodium* a little further) makes mention particularly of some *Allodiarii* by name in that Kentish Survey, and there also we may read to this purpose: *Has forisfacturas habet Rex super omnes Alodiaros totius Comitatus Chent, & super homines ipsorum.* And: *In Cantia quando moritur Alodiarus, Rex inde habet Relevationem terræ, excepta terra S. Trinitatis, & S. Augustini, & S. Martini, & exceptis his, Godric de Burnes, & Godric de Carlesone, & Ælnoth Cilt, & Esber Biga, Siret de Cilleham,* (these last three are mentioned also in the Survey there of Canterbury, amongst those whose lands were *Sac* and *Soc*-free, i. e. quit against the King of *Sac* and *Soc*;) *& Turgis, & Norman, & Azor. Super istos habet Rex forisfacturam de capitibus eorum tantummodo, & de terris eorum habent Relevamen qui habent suam Socam & Sacam.* I rather read it *habent*, than *habet Relevamen*, because by Charters both of the Cathedral and St. *Augustines* Abbey, of those and succeeding times, I find the Monks in each place privileged with the liberties of *Sac* and *Soc*, &c. over their *Allodiarii*, as termed in the charters of the latter place, over their *Thegnes*, or *Theines*, as in the former, in what form of words see in the charter of each place, for illustration sake, copied in the Appendix here, Scriptur. 19. and 20. And least these various terms (*Allodiarii* and *Thegnes*) rendring them of a seeming difference, should occasion any suspicion of their being not the same, for your satisfaction to the contrary, take this note along with you, that those who in the Latine charters of St. *Austins* are termed *Allodiarii*, in the very same charters exhibited in English (like as in those at Christchurch) are stiled *Thegnes*,

Allodiarii.

Thegnes.
Theines.

Threnges.

Thegnes. But what (may it be ask'd) were they then which in some very ancient Records of that Cathedral are named *Threnges*? Indeed I have met with a Record there, (and you may meet with it here in the Appendix, Scriptur. 21. a choice one in my account, as the book it self was it seems in his, who in the margent of the first page of it long since left this note: *Custodiatur benè iste libellus, quia etsi appareat non valere, benè tamen valet, & est libellus satis pretiosus monachis Ecclesie Christi:*) which makes no slight mention of such *Threnges* belonging to the Monks there, in these very words: *Quia verò non erant adhuc tempore Regis Will^mi milites in Anglia, sed Threnges, præcepit Rex, ut de eis milites fierent, ad terram defendendam. Fecit autem Lanfrancus Threngos suos milites, Monachi verò non fecerunt, sed de portione sua ducentas libratas terræ dederunt Archiepiscopo, ut per milites suos terras eorum defenderet, & ut omnia negotia eorum apud curiam Romanam suis expensis expediret, unde adhuc in tota terra monachorum nullus miles est, sed in terra Archiepiscopi, &c.* To this purpose *Gervasius Dorobernensis*, then a Monk of the place, speaking of the Archbishops dividing the revenue between himself and the Monks: *Sibi etiam* (saith he) *reservaverunt Comites, Barones & Milites; Monachis verò assignaverunt rusticos & agricultores.* These *Threnges* doubtlesse were the same, which in Domesday-book are somewhere called *Drenches*, and if so, your best satisfaction what they were, will be from the words explication in Sir *Hen. Spelman's* Glossary. But, me thinks, laying these Records concerning them together, and then comparing them with the fore-cited ancient charters of liberties granted

Drenches.

to the Monks of Christchurch and St. *Augustines* on the one hand, and Domesday-book on the other, *Drenches, Threnges, Thegnes*, one and all, may not unfitly be rendred in that books phrase, *Allodiarii*: being such *Liberales*, (as the Saxon *Thegnes* is not unusually turned in the old Latine translations, as *Thegenscipe* by *Liberalitas*) such *Ministri, Fideles, Servientes, Nobiles*, as being by these places dignified with some portions of their *Allodium*, or *Bocland*, did *militiam ex arbitrio tractare, nullius Domini imperio evocati, nulloque feodali gravamine coerciti*, (as our learned Glossarist concerning *Allodiarii*) being permitted to continue in their pristine estate, acquitted from military service and tenure, when as others were from *Threnges* turned into *Milites*, and their land consequently subjected to military fee and tenure. Whether the name of *Drenches* were taken up from such a cause as our learned Glossarist, from a Record by him there cited, has assigned for it, some reason there is to doubt from the mention of (the terms Synonymy) *Threnges*, in that Record of Christchurch, as known in that notion here before the conquest, whereas the other sayes they took name first after it: If before it, (as the Christchurch Record) then I see, me thinks, some cause to suspect the term corrupted from *Thegnes*, i. *Thanes*, which cleerly that Cathedral had before the conquest. On the other side, if the Record (in the Glossary) be right, and that withall *Threnges, Drenches, Thegnes* and *Allodiarii* be (as all the fore-cited authorities laid together, they seem to be) Synonima's, terms identical, then were our Kentish *Allodiarii*, such as had not revolted from the Crown, by opposing the Con-

S

querour,

querour, whether by their aid or counsel, but had peaceably submitted to him and his Empire, whilest consequently others of the county opposing, withstanding, and resisting him and his coming in, had *ipso facto* forfeited their possessions: and if so, then *Spots* history, whereof so much before, may well deserve yet another dash, or, if you will, another spot. But thus far of *Allodium*, as also of what induced it, *Bocland*, which, as to the name, almost quite ceased with the Saxons, though, as to the thing it survived some time after, under the notion of *Allodium*, into which it was translated of the Normans here, and of them so altered also in the very thing, that it became thus far subject unto Tenure, as in the opinion of learned² men, it was land (as we say) holden, and so accounted, whence in time that common and received² axiome amongst us, that in the Law of England (since the conquest at least) we have not properly *Allodium*, that is, not any Subjects land that is not holden: in which respect, as one^b saith, he that can say most for his estate, saith thus: I am seized of this or that land or tenement in my Demain as of fee, *Seifitus inde in dominico meo ut de feodo*, &c. And 'tis most true at this day, but under favour, it was otherwise since the conquest, witnesse (besides Domesday-book, where the opposite to Fee, *Allodium*, is very obvious) those charters afore-cited, the one of St. *Laurence*, the other of Christchurch, (and such like) mentioning land holden by the Authours or Owners, for which they were responsible to none, as also the Pinenden plea for the Archbishops lands of Canterbury, and the grant in *Alodium* mentioned in *Eadmerus*, evidencing cleerly the contrary, and

^a Mr. *Seldens* Titles of Hon. first Edit. pag. 390.

^a Id. Jan. Angl. pag. 61. *Coke* Instit. p. 1. fol. 1. & 5. *Cowell's* Interpreter in verb. *Fee*.

^b *Cowell*, ubi supra.

and asserting (some of them) the continuance of such creations from the King, to whom, after *Textus Roffensis*, it peculiarly belongs to grant out, or passe land in that kind: *Carta Alodii ad eternam hereditatem*, being there reckoned and ranked *inter consuetudines Regum inter Anglos*.

Now as our *Bocland* did not presently expire with the Saxons, its first Authours, upon their vanquishing and supplanting by the Normans, so neither did our *Folcland*, but survived and continued *Folcland*, after the conquest, and remains unto this day, though not in the very name, yet in the thing and substance. For, as aforetime the Saxons had their *Ceorles*, *Gebures*, *Folcmen*, &c. as afterwards the Normans their *Villani*, *Bordmanni*, *Cotarii*, &c. so what the former held was called *Folcland*, *Gafol-land*, &c. and was opposed to *Bocland*; what the latter, Villenage, and (in some sence) Socage, opposed to Chivalry, Knight-service, &c. and in all likelihood intended by that *Rusticana servitus* occurring in a charter of *Walchelinus Maminot*, granting the tithery of Bertrey to the Church of Rochester: *Quod si aliquid de prædicto Dominio in rusticanam servitutem translatum est*, &c. as it is in Mr. *Seldens* History of Tithes, cap. 11. pag. 313.

Servitus Rusticana.

As for the original of Socage, there^b are that refer us (for the finding of it) to a notable passage in *Gervasius Tilburiensis* his book intituled *Dialogus Scaccarii*, who lived and wrote in *Hen. 2.* dayes, which (to bring the Reader better acquainted with the state of affairs in the disposal of our Countrey-mens Free-hold in those elder times, when as the English State was new moulded) I

^b Vide Adversar. in Mat. Paris. Hist. & D. Roger. Tynsden. Præfat. in LL. Hen. 1.

^c I turn conqui-
sitionem, so, in
analogue to
Conquastors
turning by
Conquerour.

^d Or, Ferms.
^e Or, Reve-
nues.

^f Or, Obser-
vance.

^g Or, In way.
^h Or, Descent.

here offer to his view: *Post Conquisitionem, &c.*
i. After the^c Conquest of the Kingdome, and the de-
served subversion of the Rebels, when the King
himself with his Nobles surveyed his new Coun-
trei, a diligent inquiry was made, who they were,
which taking part in the war against the King, had
saved themselves by flight: to all these, like as to
the heirs of such as had fallen in the war, all hope
of any lands, ^d possessions and ^e rents, which formerly
they enjoyed, was cut off. For they accounted it
no small favour to escape with life under enemies.
But those who when summoned, came not to the
war, or being occupied in household or other neces-
sary affairs, were absent, when in processe of time
by their constant^f serviceablenesse, they had ingrati-
ated themselves with their Lords, without hope of
succession, their children onely, and that but at the
Lords will, began to possesse. Afterwards, when
becoming odious to their Lords, they were every
where expelled their possessions, nor was there any
that would restore what was taken away, a com-
mon complaint of the Natives came to the King,
that being thus hated of all, and bereaved of their
estates, they should be enforced to betake them-
selves to forein parts. At length, after consultation
upon these matters, it was decreed, that what by
their deservings, and upon a lawful agreement,
they could obtain of their Lords, should be their
own by inviolable right. But they should challenge
nothing to themselves^g by name of^h succession, from
the times of the Nations subduing. Which thing
truly, how discreetly it was considered of, is mani-
fest, especially when as thus by all means, for their
own good, they were bound from thenceforth to apply
them-

themselves by constantⁱ serviceablenesse to purchaseⁱ Or, Observ-
 their Lords favour. Insomuch as who of the con-
 quered people possessed lands, or such like, obtained^{ance.}
 them not, as seeming to be due by right of suc-
 cession, but in recompence of his deservings, or by
 some intervening agreement. Hence we see how
 precariously matters stood with the generality of
 our poor countrey-men (in point of estate) in
 those dayes, and with what observance and obse-
 quious respect they were fain to carry themselves
 towards their conquering Disseisors, to purchase
 many times but a Modicum of what had lately
 been their own, and when they had it, see with-
 all upon what kittle, tottering, uncertain terms
 they held^k it. The relation comes from a very
 good hand, and is so authentike, as (for ought I
 know) it may be credited for it self. But if any
 man expect further confirmation, I suppose it may
 be found in *Bracton*, lib. i. cap. ii. num. i.
 where he hath this passage, and is in part seconded
 in it by *Fleta*, lib. i. cap. 8. *Fuerunt etiam* (saith
 he) *in Conquestu liberi homines, qui liberè tenuerunt*
tenementa sua per libera servitia, vel per liberas
consuetudines; & cum per potentiores ejecti essent,
postmodum reversi receperunt eadem tenementa sua
tenenda in villenagio, &c. The same^l Authour,
 fol. 26. and elsewhere tells us of a sort of Tenants,
ad similitudinem Villanorum Sockmannorum per con-
ventionem de gratiâ Dominorum, licet hoc esset ab
initio villenagium, &c. a passage, if not *totidem*
verbis, yet in substance often repeated of him, in
 my judgement intimating thereby that practice of
 the Tenants currying favour and complying with
 their Lords, whereof in *Tilburiensis*, and their ob-
 teining

^k Some cause
 (haply) of the
 paucity of
 Charters or
 Feoffments so
 ancient as those
 times, extant
 when *Bracton*
 wrote, as he
 observes, fol.
 382.

^l *Bracton*, fol.
 168. a. 170. a.
 208. b.

teining thereby to better their estates, and by degrees to creep out of Villenage into a kind of Socage, a Tenure (thus) grown to that latitude and so comprehensive, as it helps to make that Dichotomy, into which all the Kingdomes lands in the hands of common persons, in point of Tenure are resolved, Chivalry being the other. Now being of such note, a little further enquiry after the antiquity of the thing, and etymologie of the name, to clear the truth in both, wil not do amisse (as I conceive) in this discourse of Tenures.

*Socage, how
vulgarly deri-
ved.*

*m Lib. 2. cap.
35. num. 1.
fol. 77. b.*

By the common and received opinion of our Lawyers, derived I suppose, and first suckt from (that great Ornament of their Profession) *m Bracton*, the term is said to come (to use the Authours own words) *à Socko, & inde tenentes qui tenent in Sockagio, Sockmanni dici poterant, eo quod deputati sunt, ut videtur, tantummodò ad culturam, &c.* This (of *Bracton*) is strongly backt by *Littleton*, in his book of Tenures, where treating of Socage, he saith, that the reason why such Tenure is called, and hath the name of Tenure in Socage, is this: because (saith he) *Socagium idem est quod servitium Socæ, & Soca idem est quod caruca, &c. A Soke or a Plough.* In ancient time (for so he adds for further confirmation) *before the limitation of time of memory, a great part of the Tenants which held of their Lords by Socage, ought to come with their ploughs, every of the said Tenants for certain dayes in the year, to plow and sow the Demesne of the Lord. And for that such works were done for the livelyhood and sustenance of their Lord, they were quit against their Lord of all manner of services, &c. And because that such services were done with their ploughs, this Tenure was*

called *Tenure in Socage*, &c. Thus *Littleton*, followed by the generality of our common Lawyers and others since, not without a kind of popular error, as under favour I conceive, and with submission to better judgements, shall endeavour to evince, without check (I hope) for presuming to control so great, so many, and those eminent Lawyers, whereas here I oppose them not in point of Law, but onely in matter of fact.

The first exception then that I take against this opinion, is its inconsistency with many several species of Socage-land, or land said to be of Socage kind or tenure; such as *Petite Sergeanty*, *Escuage certain*, *Frankalmoigne*, *Fee-ferm*, *Burgage*, *By Divine service*, and the like, which have no manner of relation to the Plough, or matters of Husbandry, as originally they say Socage had, and therefore still retains the name, though the cause whereupon it first grew be taken away, by changing the service into money. So *Littleton*. An exception (this) warded off by the Patrons of the present derivation, with a distinction of a double kind of Socage, the one, that so called *à causâ*, the other ⁿ *ab effectu*, and to this latter sort (Socage in effect) are these of them referred, as one would say, Socage at large, because partaking of the like effects and incidents with Socage. But this distinction carries with it no great antiquity, being questionlesse sought out since *Bractons* time, as necessary to uphold that of his and his followers derivation of Socage from the Plough, otherwise so inconsistent with these Tenures. Not but that I hold them to be Socage, with the common opinion, but from another cause, as I conceive, whereof anon.

ⁿ *Coke* Instit.
par. 1. sect.
117. and 120.

In

° De Feudis,
p. 22, 23.

° Mirroir, cap.
1. sect. 3. fol-
lowed by Coke,
Instit. par. 1.
fol. 14. a.

° Vide Foed.
Ed. &c. cap. 6.
Lamb. explicat.
verb. in verb.
Arattonis ele-
mosyna, & Spel.
Concil. pag.
130.

In the mean time, I have a second exception against the derivation, which is this: that though that of the Plough may be the chief service, wherein Socage is conversant, yet are the Sycle and the Syth, the Fork and the Flail, and many such like, attendants also upon it, and concomitant services with it in Socage-land: to derive then Socage *ab aratro*, that being but one species of Socage-services, is as improper under favour, as at this day to define *Feudum* (comprehending whatsoever fee is constituted for any lawful and honest service, although not military) by what the Feudists call *Clientela militaris*, because a chief part of feudal service is military, and that of old Fees, for the most part, were granted out *militiæ causâ*, an error into which ° *Vulteius* challengeth *Hotoman* to have fallen, in his definition of *Feudum* thence, which my Author calls a definition of a *genus*, by a *species*, concluding it not logical.

A third exception taken to it may be this, that if Socage-land be so ancient (under that notion) as King *Alfreds* time, as^p some will have it, who tels us that in those dayes Socage-fee was divided between the heirs males, why then was it not rather from the Saxon *rylth*, signifying (what *Soc* never did with them) a Plough, (whence *rylth-ælmyrre*, for Plough almes, being a pension of a penny imposed upon every Plough, in the name of^a Almes) called *Sulh-age*, or *Sul land*, to say Plough service-land? or how could it in those times be called Socage in the sence by this derivation intended, when the word *Soc*, if it signifie a Plough (as it doth a Plough-share) being in that sence a French word, cannot in any reason be thought to have taken place here, I mean in the Saxons times, and so long

before

before the French, by their Conquest, and intermixture with us following thereupon, had prevailed to suppress and extirpate the English language? But if it cannot pretend to so much antiquity, as being a term, as well in the original, as in the sence, Norman, or French, then probably they would not have imposed it without some pattern, some precedent, of their own Countrey, as used there in like case: but doubtlesse this was wanting, their term for land of this condition being *Tenement Villein, Villein Fief, Fief Roturier, Heritage Roturier*, and the like. Besides, had the term been of their imposing, with intent to have it signifie Tillage-service, *Charuc* being the usual word with them for a Plough, fetch't from *Caruca*, (whence their *Carucata terræ* for a Plough land, not heard of here with us until their coming hither :) more likely it had been called *Carucage*, or the like; as a certain Tribute by our *Hen. 3.* imposed by the Plough, was therefore called *Caruage, Carucage*, and the like.

See the Grand Customier of Normandy, ca. 26. and 53. with the glosse there; and Mr. Seldens Tit. Edit. 1. p. 291.

Vide Spelm. Gloss. verb. *Carucagium.* Carucage.

My next and last exception is from *Fleta's* derivation of *Socmanni*, where speaking of the Kings manours he saith: *In hujusmodi verò maneriis erant olim liberi homines liberè tenentes, quorum quidam cum per potentiores è tenementis suis ejecti fuerant, eadem postmodum in Villenagium tenenda resumpserunt: & quia hujusmodi tenentes cultores Regis esse dinoscuntur, eis provisa fuit quies ne sectas facerent ad Comitatus vel Hundredos, vel ad aliquas inquisitiones, assisas vel juratas, nisi in manerio tantum, dum tamen pro terra, quorum congregationem tunc Socam appellarunt; & hinc est quod Socmanni hodie dicuntur esse. A Soca enim derivantur, &c.* Where,

Lib. 1. c. 8. though afterwards, lib. 3. c. 16. he concurs with Bracton.

T

though

though he say that the *Socmanni* were *Cultores Regis*, yet he sayes not that thence they were called *Socmanni*; but that their Congregation, (their Assembly or Company) was called *Soca*, and hence it is (saith he) that they are termed *Socmanni*, for they are derived from *Soca*, &c. Thus he. Now if from *Soca* (an Assembly of Husbandmen) then not from *Soc*, *Sock*, or *Soke*, (a Plough.)

Socage, a new derivation of it proposed.

To come now to that which I conceive to be the right and genuine derivation of the term (*Socage*.) To expresse a Liberty, Immunity, Franchise, Jurisdiction, Protection, Privilege, &c. our Saxon Ancestours were known to have and use a word somewhat variously written of them, viz. *Soc*, *Socne*, *Soken*, and the like. Hence (to proceed to instances) Sanctuary, the privilege sometime so called, was of them termed *cýpicena rocne*, otherwise *cýpicena ꝥnyþe*. With them also *ꝥ ꝥnyþ-rocne* signified a jurisdiction to keep the peace. *ꝥ ꝥnyþ-rocne*, an immunity from service in war, or from warfare. *ꝥ hlaꝥopþrocne*, the Lords protection to his man or Tenant. *ꝥ hamrocne*, being of a double sence, signified both a privilege or protection against assaults upon a man in his own house, or under his own roof, and a liberty or franchise to hold plea thereof, with power of animadversion by mulct, or fine. *ꝥ ꝥaldrocne* imported a liberty or privilege of Faldage, debarred and denied unto Tenants in times past, and by the Lord, for the enriching his own Demesne lands, reserved to himself. Hence their word, *Faldwrth*, for him that enjoyed such a liberty. Shall I now give you one example from the Normans? *Nullus enim Socnam habet impunè peccandi*, say the Laws of *Hen. 1.* cap.

Vide LL. Aluredi, c. 2, 5.

ꝥ Spelm. Glossar. in voce.

ꝥ Idem, in voce.

ꝥ LL. Ethelstan. apud Exon. & Greateleyam.

MS. in Fornalen.

ꝥ Spelm. Glossar. in voce.

ꝥ Idem, in voce.

Faldwrth.

cap. 24. speaking of Barons having *Soch*. And (to enlarge yet a little further touching *Soc*, &c.) as it signified a Liberty, Immunity, Franchise, Privilege, Jurisdiction, &c. so withall a Territory, Precinct, or Circuit, wherein such a Jurisdiction, and such Privileges were to be exercised, and that as well in a simple, as a compounded notion. Hence (for the former) *Socha* of this and that place so obvious in Domesday-book, whereof some instances in *Ingulphus*, by name, *Soka de Donnedike*, *Soca de Beltisford*, *Soca de Tad*, *Soca de Acumbury*. In this sence it frequently occurs in *Hen. 1.* Laws, where you may also often meet with *Soca* *Placitorum quam quidam habent in suo de suis*, and other such like passages. In the same sence the Register hath it, fol. 1. a. as also *Bracton*, lib. 5. tract. 1. cap. 2. num. 3. In the Statute *de Gaveto*, made anno 10. *Edw. 2.* (where the Custodes, the Guardians of the Soke, are termed *Sokerevi*, of Dr. *Cowell* turned by Rent-gatherers) and in the Statute also 32. *Hen. 8.* cap. 29. it is used accordingly. Thus of *Soke*, or *Soken* simply. In composition it occurs often with *Port*. As for example, the *Knighen-gild*, sometime in or neer East-Smithfield London, erected first by King *Edgar*, and confirmed with some enlargement afterward by succeeding Kings, (being a portion of ground enfranchised with special liberties, to be enjoyed within that extent of it set forth by *Stow*) was anciently called a *Soke*, and afterwards, (because lying by Eald-gate, now *Algate*, *Port* being added, or rather preposed to it) *Portsoke*, being for extent and otherwise, I take it, the same, which at this day is known there by the name of *Port-*

^cCap. 9. (where I read *Placitorum* for *Pracitorum*) and elsewhere.

Sokerevi.

^d Survey of London, pag. 115, 925.

'Coke Instit.
par. 4. pag.
252.

soke-Ward. Here now we find it restrained to a part onely of a City, a particular Ward, but in some ancient Charters of Liberties granted to several Cities, and other like places of this Kingdome, and particularly to London, you may find it spreading it self to the utmost skirts and liberties of the City without the wals, as in *H. 3.* Char-
ter to that City, ann. 11. of his reign: *Et quod infra muros civitatis, neque in Portsokne, nemo capiat hospitium per vim, sed per liberationem Marschalli, &c.* The like occurs in several charters to the city of Canterbury, whereof one ('tis Henry the seconds) thus: *Concessi etiam eis quietantiam murderi infra urbem, & in Portsoka, & quod nullus, &c.* Another (of Henry the thirds) thus: *Concessimus etiam quod nullus de civitate vel Portsoka sua captus vel reſtatus de aliquo crimine vel forisfacto pro quo debeat imprisonari, imprisonetur alibi quam in prisona ejusdem civitatis, &c.* A little after: *Et quod nullus externus faciat Forſtallum in Civitate prædicta, vel in Portsoka sua ad nocumentum Civium, &c.* I spare to add more instances, it being plain enough by these, that the liberty of the place in the full extent of it is intended by *Portsoka*: you may call it not improperly, the Extent of the Franchise. The fore-cited Statute 32. *Hen. 8.* cap. 29. by occasion there given to mention the Soke of Oswelbeck in Nottinghamshire, useth the terms of *Lordship* and *Soke* indifferently, to expresse the territory wherein the custome there mentioned took place, whereby it seems our term (*Soke*) also signified a Lordship, the word extending thither, I conceive from the extent of the priviledge so called throughout the whole compasse of the Lordship, viz. that

that whoever is dignified with it, and its constant concomitant *Sac*, as regularly all Lords of manours are, hath that dominion over all men and matters of his Territory or Lordship, as freely to hold plea, and have and take cognizance of the one, and between the other, in such matters, I mean, as (in the language of *Hen. 1.* ^f *Laws*) exceed not his *Soch*, his cognizance, as being haply *Regalia*, certain arduous or capital matters reserved to the King and his Justices. Hence, to have *Socne*, or to be so privileged, after a book of Christchurch Canterbury, is *aver fraunche court de ses homes*, answerable to that of *Fleta*, lib. 1. cap. 47. *Soke* (saith he) *significat libertatem curiæ tenentium, quam Socam appellamus*, as also to what I read in an old Ms. amongst other etymologies of this kind: *Nota quod Sok est quedam libertas, per quam Domini tenebunt Curias suas, & habebunt sectam homagiorum.* A great ^g Lawyer of our times gives it this definition: *Soc* (saith he) *is a power or jurisdiction to have a free Court, to hold plea of contracts, covenants, and trespasses of his men and tenants.* Within a little after he proceeds to derive it, in a different way (though not without some company) to what is here afore-proposed; how rightly *judicent alii*. Shortly, *Soc*, *Soke*, *Socne*, and the like, (not to mention its derivation in *Clement Reyners* ^h *Onomasticon*, and some others) betokened, we see, both a Liberty, Privilege, Franchise, &c. and a Precinct, or Territory, wherein such a Liberty, &c. was exercised, if you will, a *Sokmanry*.

And resolving our Socage (the Tenure so called) to be deriveable from *Soke*, considered under one of these acceptions, I stood irresolute a while to which

^f Cap. 22.
where for *ac-*
cedit, I read *ex-*
cedit, according
as the 24th
chapter hath it.

^g Sir Edw. Coke,
Instit. par. 2.
p. 230.

^h Before his
Apostolatus Be-
nedictinorum in
Anglia.

which of the twain I should referr it. Once I intended to pitch upon the latter: and then me thought, as the territory, precinct, extent, circuit, &c. of a Lordship or Manour was called *Soca*, and *Socmanria*, so probably the men of that Territory, Precinct, &c. in respect of their relation to that Soke, and their dependance upon it, and the Lord thereof by Tenure, were termed *Socmanni*, that is, men appertaining to the Soke, or Lordship, *quasi Socæ ascriptitii; homines Socæ*: and consequently, as in that respect the Men were called *Socmanni*, so their services, (those duties in works, provisions, moneys, or otherwise, which by their Tenure they were to return to the Lord of the Soke) were called *Socage*; tract of time having added to *Soke* or *Soc*, (what a famous Lawyer of these times calls a legal termination) *agium*, in composition (saith he) signifying service or duty, as *Homagium*, the service of the man; *Escuagium*, *Servitium Scuti*, &c. And so the parts being put together, (*Soc* and *agium*) it comes forth *Socagium* in Latine, *Socage* in English. Thus, I say, was it sometime in my thoughts to have derived *Socage*, and indeed not altogether improperly in a large sence; all sorts of Tenants of or to a *Soke*, (the *Cætus Tenentium aut Vassallorum manerii*, the *Homage*, as sometime called) being from their relations to the Soke or Lordship, and the Lord thereof, not unfitly called *Socmanni*, and their service and tenure consequently *Socagium*. But at length, upon second thoughts, I concluded this somewhat too large and vast a derivation, as being comprehensive of all sorts of Tenants, *Villeins* and all, which, with the ^k Authour of the Terms of Law, I conceive to be improperly called

¹ Sir Edw. Coke, Institut. par. 1. fol. 86. a.

^k In the word Villenage.

led *Sokemen*, or their tenure *Socage*. Besides, when I first pitch'd upon that derivation, I conceived the tenants whole service to be (if I may so call it) *Socal*, respecting onely the *Soke*, not foreign, whereas afterward I found that *Socage*-service was not so to be restrained, it being ordinary with Tenants in *Socage* to do service *extra*, or *foris*, *Socam*, as to ride with their Lord from manour to manour, (like the *Rod-Knights* in *Bracton*) to carry and pay rent to the Lord, and to deliver him corn and other provisions at his Granary or elsewhere out of the Tenants proper *Soke*, and the like: in which respect also with what incongruity are pure Villeins called *Sokemen*? since they are so far from being tied to the *Soke*, that they may be commanded out, and imployed abroad wheresoever the Lord shall please, as well without as within the *Soke*. Changing therefore my opinion, as to that derivation, and looking further back to that other (the former) fence of *Soke* (a Liberty, Priviledge, Immunity, Franchise, &c.) I resolved finally to derive and fetch it thence; and thus I make it good.

¹ Fol. 35. b.
& fol. 79. b.

Amongst other sorts of land, our books are full of that called *Terra servilis*, Villein-land, land holden in Villenage, servile land, such namely (for fuller explanation of it) as that holden at the Lords will, both for time and services; in both respects uncertainly; for time, it being in the Lords power (of old^m at least it was so) *tempestive*, or *intempestive*, to revoke, and resume the same out of the Villeins hands into his own, and for services, the tenant being altogether ignorant, and not knowing over night what service may be required of him the next morning. He might also have greater or

^m Vide *Bracton*,
fol. 263. a. &
fol. 287. a.
208. b.

lesser

lesser taxations laid upon him, at his Lords will: nor might he marry his daughter without a Fine to his Lord, for his leave and licence, & *ita semper tenebitur ad incerta*, saith my Authour. Now to defend land against the Lord from Villenage, and to come off acquitted of this servitude and servile condition, it was and is necessary of the tenants part to shew a tenure of his land, by opposite and contrary services to those in Villenage, that is, *per certa servitia*, by certain, expresse, definite, services: and, as otherwise it may be concluded, that his tenure is Villenage, so hereby, if the service be not Regal, or Military, it is as cleerly Socage. For, that *certa servitia*, are a superfedas to Villenage, and do make it to become Socage, proofs are obvious. To this purpose consult we *Bracton*, lib. 2. cap. 16. num. 9. as also eod. cap. num. 6. where he is expresse for the tenants acquital from all other services, (some being expressed in the Charter made him by his Lord) than what are specified therein: *Alia omnia servitia & consuetudines quæ expressa non sunt tacite videntur esse remissa: et satis acquietat ex quo specialiter non onerat*. See him again, eod. lib. cap. 36. num. 8. at these words: *Cum teneatur Sockmannus defendere tenementum suum erga Dominum suum per certum redditum in pecunia numerata, vel per quid tale, quod tantundem valeat, quæ consistunt in pondere, numero, vel mensura, in solido vel in liquido, sicut frumento, vino, oleo, secundum quod redditus diversimode accipiuntur, &c.* Have recourse also to the same Authour, lib. 4. tract. 1. cap. 23. num. 5. at these words: *Dum tamen servitia certa sunt; si autem incerta fuerint, quaecunque fuerit tenementum, tunc erit Villenagium, &c.* And, as agreeable hereunto, that

that of Sir *Edw. Coke*, in his Commentary upon *Littleton*, Sect. 120. *To Tenure in Socage* (saith he) *certain servitia do ever belong*. Hence it is, that the Authour of the Terms of Law, expounding Socage, or tenure in Socage much after the same manner with *Bracton, ubi supra*, (to wit lib. 2. cap. 16. num. 9.) saith, that *to hold in Socage, is to hold of any Lord lands or tenements, yeilding to him a certain rent by the year for all manner of services*. You see it proved then, that *certain servitia*, certain services, so they be not military, make a Socage tenure. The ground whereof is obvious, *viz.* that by such tenure (*per certa servitia*) the tenant hath a *Soke*, a privilege, an immunity, a *Quietus est*, as from Villenage in general, so from all villein, military, or other services than those by contract, or custome^a charged upon him: a *Soke*, I say, whereunto *agium* being added, signifying the service or duty to be returned for that privilege, it comes forth *Socagium* in Latine, *Socage* in English, as, by putting *man to Soke*, the Tenant is signified, and called *Sokeman*. But if *Soke* here carry with it such a fence, (of Immunity, Discharge, Privilege, &c.) how comes it then to passe (may some perchance demand) that *liberum* is often found to accompany *Socagium*, as *liber* also doth *Socmannus*? For answer, I conceive, to distinguish Free Socage from Base. Not but that Base Socage had its privilege as well as the other, as being holden by services set and certain, or determinate; but in regard those services regularly consisted in servile works incident to Villenage, the tenure gat the name of *Villanum Socagium*, to distinguish it from *Liberum Socagium*, acquitted of those servile works, and consisting^o in *denariis*. From

^a Vide LL. Edw. Confess. apud Cl. Seld. Not. ad Edmer: cap. 33. pag. 184.

Objection.

Solution.

^o *Bracton*, lib. 2. cap. 35. num. 1. The rent hence called *Quit-rent*.

p Fol. 7. a. fol.
 170. a. fol.
 272. a. fol.
 209. a. *Fleta*,
 lib. 1. cap. 8.

hence also (such a *Soke*, such a Priviledge) it is, that the *Villanum Socagium* in the Kings Demesne is turned of^p *Braeton* and others, by *Villenagium privilegiatum*. By the way, hence judge whether I am not right in my derivation of Socage from *Soc*, *Soke*, &c. a Priviledge, &c. when here you see *Villanum Socagium* of *Braeton* and others, rendred by *Villenagium privilegiatum*, i. e. priviledged Villenage.

'Tis time now that we inquire how this derivation will suit with those before remembred tenures, *By divine service, in Frankalmoigne, Fee-Ferme, Petite Sergeanty, Escuage certain, Burgage*, and the like. Whereto I answer, Very well. For, as they were all, through a tacite discharge from corporal service in warfare, excused from military Fee, or Tenure, so on the other side, by reason of an expresse tenure *per certa servitia*, or *per certum redditum*, common to them all but Frankalmoigne, they were rendred quit and free of Villenage, and consequently became of Socage tenure. As for *Frankalmoigne*, as it may challenge an interest in the composition of Socage from *Soc* or *Soke*, and *agium*, to wit, in the former syllable, so on the contrary side, hath it as little to do with the latter, because such tenure is quit of all service whatsoever, as well spiritual, (unlesse & uncertain) as temporal. But because as it hath not to do with military service on the one hand, so neither with Villenage on the other, and hath its priviledge expressed in that epithete of *Libera*, it is referred to Socage, as in some sort such.

a Coke upon
Littleton, in
Frankalmoigne.

This then is that (this tenure *per certa servitia*) that makes tenure *By divine service*, of no relation to the plough, to become Socage. This makes also *Fee-ferme*, a meer censual service, (much in the nature

ture of that which among^r Civilians is called *Ager* ^{Lib. 1. ff. si.} *veſtigalis*) as being liable onely to ſo much yearly ^{ag. veſtigal.} rent, without any other ſervice regularly, unleſſe Fealty, ſuit of Court, or the like, according as the Feoffment may run, and having nothing to do with the plough, to become Socage. This makes *Eſcuage certain*, another tenure of no relation at all to the plough, but *quatenus* Eſcuage, as it is ſimply Eſcuage, *eo ipſo*, of^r Knight-ſervice, becauſe by being certain it draws him^r not forth to any corporal ſervice in war, to be alſo ^{Bract. fol. 37.} termed Socage, whileſt contrarywiſe what is properly ^{a. & 79. b.} called Eſcuage, that namely which is uncertain, and ſo called, becauſe (beſides its ſubjection to Homage, Fealty, Ward, and Marriage) it is uncertain how often a man ſhall be called to follow his Lord into the wars, and again what his charge will be in each journey, from being liable, I ſay, to this uncertainty of duty, is^r Knight-ſervice. Hence (fourthly) it is that ^{Dr. Cowell.} *Burgage* (a tenure no way ſmelling of the plough, or ^{Interp. verb.} tillage, being currant and converſant onely in cities ^{Eſcuage.} and towns) becauſe holden for a certain annual rent, becomes with the reſt Socage. Hence alſo our Kentiſh *Gavelkynd*, conſidered in its name or term, (betokening cenſual land) of no affinity with the plough, or plough-ſervice, becauſe, I ſay, holden *per certa ſervitia*, comes to be called Socage. The like might be ſaid of *Frank ferme*, and other the remaining ſpecies of Socage-land: one and all, as properly ſo called, as rightly, and with as much reaſon referred to that head of our Engliſh tenures, as that which for its plough, or tillage, ſervice is ſaid to be more peculiarly ſo called, ſtanding not in need of that diſtinction which the common opinion uſeth to bring them within the compaſſe of it, called *ab effectu*, be-

* Coke Instit.
par. 1. fol. 86.
b. Bacons Ele-
ments, tract. 2.
P. 36.

* In Archiv.
Archiep. Cant.

cause of like effects and incidents belonging to them with Socage tenure; a distinction by this derivation rendred frivolous and needlesse, and under favour therefore as fit to be laid aside, as their^u assertion is to be retracted, who, to vindicate the reteining of the name of Socage, as of use onely to distinguish that from a tenure by Knight-service, affirm that the cause wherupon the name of Socage first grew, *viz.* Plough-service, is taken away, by the change of such service into money, whereas presupposing our present derivation of Socage to be admitted, both name and cause still continue. Thus much for Socage, a term that to me first occurs in *Glanvill*, never as yet in any elder Record. In a Roll of * Accompts of the Archbishop of Canterburies mannours, for the sixth year of Archbishop *Baldwyn* (*Glanvills* Coætanean and Companion in his voyage and expedition, with King *Richard* the first, to the holy land) which by computation was the year of our Lord 1190. it occurs by the name of *Soggagium* thus: *Super Soggagium London remanent xx. d.* and this in Croydon manour there, amongst the expences and deductions following the receipts of that year. Which I mention, not as conceiving it no elder than *Hen. 2.* dayes; yes I rather hold *Socmannus*, *Socmanria*, and *Socagium* to be relatives, and consequently that where the one occurs, the rest are implied: but *Socmannus* is obvyous in Domesdaybook, and lesse ancient, therefore I perswade my self *Socage* and *Socmanry* are not.

Virg. 5. Aeneid. *Nunc age, carpe viam, susceptum perfice munus.*

Now therefore to come to our *Quære*, (whether *Gavelkynd* be a Tenure or a Custome) and give it an answer:

answer: I confesse there are that in some sort hold the negative, as who will have it to be a Custome accompanying the land where it obtaineth, rather than a Tenure whereby the land is holden, holding the whilest the Tenure to be Socage: And of this opinion Mr. *Lambard* doth more than seem to be. Now between Tenure and Custome in this case with us, the difference, as I collect, stands thus: admit it onely a Tenure, and then the nature of the land is not concerned in point of descent; so that in some cases (as the escheat of it by Death or *Cessavit*, to the Lord that holds over by Knight-service, or to the Crown by forfeiture in treason and the like) it ceaseth to be any longer of *Gavelkynd*-nature, in point of descent, and goes not, as before to all, but onely to the eldest of the sons, according to the course of the Common Law: whereas if it be a Custome following the nature of the land, then it is, say they, inseparable from that land where it obtaineth, inso-much as notwithstanding this escheat, or whatever other alteration of the tenure, it remains, as before, partible among all the sons, or other heirs where sons are wanting. But to the point. To prove *Gavelkynd* to be a tenure, I shall not need, I think, to multiply authorities, the generality of those ancient deeds that I have seen for the granting lands in *Gavelkynd* (whereof some are exhibited in the Appendix) are wont to have their *Tenendums* (the usual and more proper place for the creation of a tenure in any kind of grant) thus phrased: *Tenendum* either *ad* or *in Gavelikendam*, or the like. The office recited of Mr. *Lambard*, in his Peramb. pag 540, found after the death of *Walter Culpepper* is alike phrased: *Tenuit in Gavelkind* being a much repeated passage in it.

The

Perambul.
pag. 535, 536,
537.

Nota is expressed for this; lib. 6. cap. 17. parag. 1. where he saith, *Sicut in tenura de Gavelkynde, vel alibi, ubi terra partibilis est, &c.* See Regist. orig. fol. 78. b.

The Statute 18. *Hen. 6.* cap. 3. in terms calleth it a tenure, taking knowledge, *that there were not at that day within the Shire above 40 persons at the most, which had lands to the yearly value of xx. pounds without the tenure of Gavelkynd, and that the greater party of this County, or well nigh all, was then within that Tenure.* And this alone (which I shall add) may evince and clear it to be a tenure, that since the Statute of *Quia emptores terrarum*, anno 18. *Edw. 1.* prohibiting the subject to let land to be holden of himself, as there are not to be found any more grants of land ² *pro homagio & servitio*, so neither in *Gavelkynd*. For brevity sake, I will urge no more authorities of this kind. Being thus then apparently a tenure, how cometh it to passe that we so usually call it the *Custom of Gavelkynd*, seldome either making or finding mention of *Gavelkynd*, but with that adjunct, and under that notion of *Custom*? Indeed the property of equal partition is and hath so long been of that eminencie in our Kentish *Gavelkynd*, and is so much celebrated for that property, that as if it were the sole and onely property of it, all the other, in respect wherof this land may as well be called *Gavelkynd* as for this, are as it were forgotten, and that onely carries away the name from its fellows: whereas that of Partition (as hath been said before) is but one among the many other properties and customs in our Kentish *Gavelkynd*, such as *Dower of the Moyety*; ^a *Losse of Dower by marriage before or after assignement*; ^b *Not to forfeit lands for Felony*; *Power of alienation at fifteen years of age*, and the rest obvious in the Kentish Customal. And because this, of Partition, amongst the rest, properly depends of Custom, as thwarting the course

² *Spelm. Gloss.*
verb. *Homagi-*
um.
Objection.

Solution.

^a Hereof see
Bracton, fol.
313. a.
^b Whereof also
in him, fol.
276. b.

course of the Common Law in like case, hence the *Quære* grew at first, whether *Gavelkynd* were a Custome or a Tenure. Indeed a very improper and incongruous *Quære*, and occasioned by the want of that distinction of the *Genus* from the *Species*, which through inadvertencie are here confounded, *Gavelkynd* being the *Genus*, and *Partition* the *Species*. So that if we shall but *reddere singula singulis*, this doubt will quickly have an end: *Gavelkynd* generally spoken of and in grosse, is the Tenure; particularly, and with reference to this Partition, it is a Custome accompanying the land of that Tenure. Or, if you rather will, *Gavelkynd* is the Tenure; *Partition*, and the other properties, the Nature.

Gavelkynd-partition, whether inherent in the land, or not.

Which Solution gives occasion of another *Quære*, and that indeed a main one: *Whether* (namely) *this Custome of Partition in Gavelkynd-land, be so inherent in the land, and so inseparable from it, that notwithstanding the Tenure of the land be altered, yet the land shall still retain this property?* No more (I take it) than the rest of the fellow-properties as much depending upon Custome as that, and for which the land may deserve the name of *Gavelkynd*, as well as for that, and therefore some perhaps will say it shall retain them all indifferently. I shall not here ingage as an opponent, onely invited by this fair occasion, crave leave to propound Academically, what in like case I find delivered by others, conducing (in my judgement) to facilitate the resolution, leaving it to such as have more will to debate, and better skill to decide, the question than my self, to give a fuller and more peremptory resolution in the point. I may (I take it) not improperly state the question thus: *Whether the person in this case*

case shall follow the condition of the land, or on the contrary, the land that of the person. The former (it seems) takes place in Paris, the French Metropolis, by the custome of the place: whence that of *Choppinus*, treating of those Customes, pag. 316. *Parisiensi autem municipio* (saith he) *quod gentilitiâ pariter fulget Nobilitate clarorum virorum, usus familiæ herciscundæ minus est obnoxius invidiæ. Ubi scilicet, non personarum, sed fundorum conditio nobilis, plebeiâve, partes assignat.* To which he adds a little after: *Haud ideo tamen dividundarum hereditatum ratio immutata est Parisiis: cum nobiles fundos, plebei nobileter, & ignobiles æquo jure generosi invicem partiantur.* To the same purpose ^c our Authour elsewhere tels us, that *prisco quodam Gallici fori usu, plebeius fundus haud ideo pristinam exuebat conditionem; quod à recto ipsius Domino ære comparatus esset: Ni ejus nomine comparator in clientelam se, unâ cum superiore fundo suo, ad patronum contulisset;* which his margin elsewhere ^d records thus: *Anciennement les rotures acquises par le seigneur direct, se partageoient roturierement, si non que le ait acquereur les comprint en l'adveu de son fief, le rendant au superieur.* Thus went (it seems) the more ancient Custome in those parts. But *tempora mutantur.* The case of latter times is altered there, as the same Authour gives us to understand in both the last fore-cited places: *At posterioris ævi Jurisprudentia, mutatis calculis, novam invexit servientis fundi unionem tacitam, & consolidationem cum altero dominante, ac parem adeo utriusque qualitatem prænobilem: Nisi illius emptor subinde contestationem interposuisset contrariæ voluntatis.* Thus in the former place. In the latter thus: *Nostræ tamen ætatis moribus,*

^c De morib.
Parisiis. p. 57.

^d De Doman.
Franc. p. 40.

moribus, diversum obtinuit, censuales nempe & obnoxios agros solâ per rectum Dominum acquisitione, prorsus uniri, in unumque redigi cum prædio dominante: nisi protinus emptor contrariæ voluntatis testationem interposuisset. The effect of both is this, that Censual lands by purchase coming unto the direct Lord (the Lord of the Fee, or Over Lord) are, *ipso jure*, Feudal, and shall accordingly descend, as thereby re-united to the Fee, unlesse the buyer, at the time of purchase, do protest to the contrary. Will you please to hear his reasons? *Unionis nempe vis illa eò producitur, ut ignobile prædium, militari junctum, nobilitetur: eque plebeio ac soli vectigalibus obnoxio, transeat in feudalis clientelæ sortem liberio-rem.* Thus he, *De moribus Parisior.* pag. 58. Much what one with that in the other place (*De Domanio Franciæ*, pag. 41.) *Quoniam tacita prædiorum unione, confusa erant jura servitutum, census & solarii vectigalis: Cum rei propriæ nulla superforet servitus, exindèque vectigalis fundi qualitas esset immutata.* Thus he, whom see also, if you please, *De Domanio Gallico*, pag. 168. num. 2. Also pag. 284. num. 1. To whom add *Hotoman*, *De Feudis*, lib. 1. tit. 5. parag. 2. in fine. You see by this how the present case stands in some parts abroad. Here at home, as it seems by the very Custumal of Kent, in two several cases therein specified, the descent of *Gavelkynd*-land is changeable, and the land becomes unpartible; first (namely) when by escheat, happening either by Death, or *Cessavit*; next, when, by the tenants voluntary surrender, it comes into his Lords hands, who holds by Fee of *Haubert*, or by *Grand Sergeanty*, both which * Mr. *Lambard* takes to be Knight-service. To which may be added two

* Peramb. pag. 537.

¹ Of this some examples before, Propof. 2. towards the end.

² See the Appendix. Scriptur. 5.

other cafes, which occur in an ancient Kentish Eire, in the Exchequer, ann. 29. *Edw.* 1. where enquiry being made, and the question propounded to the Kentish men, how many ways *Gavelkynd*-land might be altered, and delivered from the ordinary and custumary descent, answer was given by four, instancing in the two former, and to them adding those other two, namely, 1. *Per licentiam Regis*, (by the Kings licence) and, 2. *Per chartam Archiepiscopi*, (by the Archbishops^f Charter.) Against this, and on the other side, (*inter alia*) may be opposed what is pleaded in the fore-remembred controverſie between *Burga de Bendings*, and the Prior and Covent of Christchurch Canterbury, wherein the Prior, in barr of *Burga's* claim to the moyety of his and the Monks manour in *Franc bank*,^g pleads, *Quod Dominus Rex qui manerium illud dedit prædeceſſoribus ſuis, non tenuit illud nomine Gavelkinde*. Whence (admitting the plea for Law) naturally ſeemeth to reſult this double conſectary. 1. That the King may hold land in *Gavelkynd*. 2. That the King holding land in *Gavelkynd*, in caſe he ſhall grant it away to any religious houſe, in *puram & perpetuam eleëmofynam*, (in Frankalmoigne) it remaineth notwithstanding partible, as before it came to the Crown, in their hands at leaſt whom the religious men ſhall infeoffe with it. Much more doubtleſſe might be ſaid in the point, as well *pro* as *contra*: but I ſhall leave it to be further argued by Lawyers, adding onely in a word, what upon the whole matter I conceive of the caſe. I would ask then, if our Kentiſh *Gavelkynd*-land be partible *quatenus Gavelkynd*? I expect no other than an affirmative answer. If ſo, and admitting withall that ſuch property

property in *Gavelkynd*-land owes it self to a custom accompanying land of that nature; yet I suppose it shall enjoy that property no longer than the land it self continues to be *Gavelkynd*, which some hold it is not, being once returned and come back again into the Lords hands, (the King especially being Lord) that granted it out in *Gavelkynd*, or of whom it formerly held in *Gavelkynd*: because then, as ^h *cessante causâ tollitur effectus*, so by reason of the unity of possession, the *Ususfructus* (I cannot well English it) being consolidated and made one with the property, that property of being censual land, which *Gavelkynd* denotes, and which cannot be intended of any land holden in Demesne, and not in service, ceaseth, and is quite extinguished, there being required to make the land *censual*, a censual Tenant, one that holdeth by censual services, such as here is none (especially in the Kings case) when once the land is come home again, reduced to its first principles, and re-united to (what, like *Fief*, is opposed to service-land) the Lords *In-land*, or Demesne-land, (as in the case of a common Lord) or to the Crown, ⁱ *à quo omnia feuda moventur & oriuntur*, the Fountain whence all Tenures are derived, (as in the Kings case) from whence by the letting it out in *Gavelkynd*, it was formerly severed. To this purpose see *Petri Gregorii Tholosani* Syntag. Jur. univers. lib. 6. cap. 5. num. 11. But of this also hitherto, for I hasten to an end.

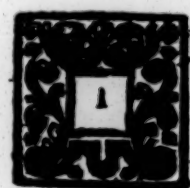
^h L. adigere. parag. quamvis. De jur. patron. c. cum cessante. extra. de appellat. l. tutores. parag. Curatores. de admin. tut.

ⁱ Bald. & alii citat. per Tholosan. Syntag. jur. univer. lib. 6. cap. 5. num. 11.



PROPOSITION V.

Whether before the Statute of Wills (32. and 34. H. 8.) Gavelkynd-land in Kent were deviseable, or not.



IN answer whereof, holding with those which resolve it in the negative, howbeit (for my part) not *studio partium*, but *veritatis amore*, I shall oppose to such as hold the contrary, what arguments are brought against them and their opinion, in a case of Mr. *Halls* of Kent, *verbatim*, as I find them published in print, which here follow, with their title :

Reasons and authorities to prove that Gavelkind-lands in Kent, are not nor were anciently deviseable by Custome.

“ **F**irst it is a rule in Law, that an Assise of Mort-
 “ *dancester* doth not lie of lands which are
 “ deviseable by Testament, &c. and this appears by
 “ divers books, as namely, 4. *Edw. 2. Mortdanc.*
 “ 39. 22. Assiz. 78. and *Fitz. Nat. Brevium* 196.
 “ 1. But it appears by *Bracton*, fol. 276. b. that
 “ an Assize of *Mortdancester* will lie of *Gavelkind*
 “ lands in *Kent*, and so it appears by divers ancient
 “ Records, *quod vide in Itinere Johannis de Bere-*
 “ *wicke*, &c. Anno 21. *Edw. 1. Copia.* fol. 1, 7,
 “ 22, 24. & in *Itinere H. de Stanton.* Anno 6.
 “ *Edw.*

“ *Edw. 2. Copia. fol. 1, 8, 9, 10, 13.* By which
“ it appears plainly, that an Affize of *Mortdan-*
“ *cester* lies of *Gavelkind* lands in *Kent*.

“ But an Affise of *Mortdancester* doth not lie of
“ lands within the city of *Canterbury*, because lands
“ are there deviseable by Custome, as it appears in
“ *dicto Itinere H. de Stanton*, fol. 3, 4, 6. And
“ it is evident, that in the city of *Canterbury*, (which
“ was anciently part of the county of *Kent*) there
“ was a special custome used to devise lands, lying
“ within the liberties of the city, and to prove their
“ wils in the Court of *Burgmote* in the same city.
“ But there needed no such Custome, if all the *Ga-*
“ *velkind* lands in *Kent* had been deviseable, &c.

“ Also the most part of the ancient Wills of *Ga-*
“ *velkind* lands in *Kent*, before the Statute of Uses
“ did mention Feoffees of the lands devised, &c. as
“ appears by the Register-books of Wills, at *Canter-*
“ *bury*, and at *Rocheſter*, whereby it doth appear,
“ that the Devisors were *Cestuy que uses*, and not
“ owners of the land devised, and although some
“ wills of land make no mention of Feoffees, yet
“ there were Feoffees of the same land, as will ap-
“ pear by the deeds of Feoffment thereof, and twen-
“ ty to one do mention Feoffees, &c.

“ Also Sir *John Fineux* chief Justice de R. B. Sir
“ *Robert Read* chief Justice de C. B. and Sir *John*
“ *Butler*, Justice, &c. devise their lands in *Kent* be-
“ fore the Statute of Uses, and make mention of
“ Feoffees, &c. which had there been a Custome to
“ devise, no question they had taken of it, &c.

“ Also many ancient deeds of Feoffment of lands
“ in *Kent* referr to Wills, sc. *Dedi, concessi*, &c.
“ *A. B. omnia terras & tenementa*, &c. *ad opus*
“ &

“ *& usum perimplendi ultimam voluntatem meam,*
 “ &c.

“ Also there are wills to be found of lands in di-
 “ verse other Counties of this Realm, whereby lands
 “ were devised before the Statute of Uses, and no
 “ mention made of any Feoffees, as appears in the
 “ Register books of the Prerogative Court, and in
 “ diverse other places, and yet without doubt they
 “ had Feoffees seised to their uses, &c. or else they
 “ could not there devise the same.

“ Also the houses and lands in Cities and Bur-
 “ roughs, which were deviseable by Custome, were
 “ reckoned *inter catalla sua*; but it were strange
 “ that all the Socage Lands in *Kent* (which are con-
 “ ceived to be *Gavelkind*) should be reckoned *inter*
 “ *catalla*, &c.

“ And in the Register, *fol.* 244. there are fourteen
 “ severall Writs of *Ex gravi querela*, and none of
 “ them make mention of any County, &c. nor of
 “ *Gavelkind*, but *secundum consuetudinem Civita-*
 “ *tis*, or *secundum consuetudinem Burgi*, &c. And
 “ if *Gavelkind* Lands be deviseable by Custome, &c.
 “ the Devisee can have no Writ of *Ex gravi que-*
 “ *rela*, because there is none before whom the Ac-
 “ tion or writ should be brought, &c.

“ Also Mr. *Lambard* in his *Perambulation*, writ-
 “ ing of the Customes of *Kent*, maketh no men-
 “ tion of any Custome to devise lands: nor the Trea-
 “ tise called *Consuetudines Cantiae* in the old *Mag.*
 “ *Charta*, *fol.* 147. which (without doubt) they would
 “ not have omitted, if there had been any such Cus-
 “ tome, &c.

“ Also between the Statutes of 27. H. 8. of Uses,
 “ and the Statutes of 32. of H. 8. of Wills, there were
 “ very

“ very few Wills made of lands, as appeareth by the
“ Register-books before mentioned, and the most
“ of such Wills as were then made (being but few
“ in number) do make mention of Feoffees.

“ Also the common practice ever since the Sta-
“ tutes of Wills hath been such, that if a Will be
“ made void for a third part, by a Tenure in Capite
“ of part of the land &c. that third part shall de-
“ scend to the Heir, and the Devisee shall not have
“ it; and this appears by special Liveries in the Court
“ of Wards proving the same; and by diverse wit-
“ nesses that can prove the same to be so, &c.

“ And in *Sanders* case of *Maidstone*, in *Anno 9.*
“ *Jacobi Regis*, all the lands were devised by Will,
“ and after the Will was avoided for a third part,
“ by reason of a Tenure in capite of a small part
“ of the land, and the third part of all the residue
“ of the lands, being *Gavelkind*, did escheat to the
“ King for want of Heir, which land is ever since
“ enjoyed under the Kings title by escheat. And
“ *John Wall* upon a trial recovered against *White*
“ the Devisee.

“ Whereby it is evident that *Gavelkind* Lands in
“ *Kent* were never deviseable by Custome, and so
“ it was agreed *per curiam Pasch. 37. El. in C. B.*
“ in *Halton* and *Starthops* case, upon evidence to
“ a Jury of *Kent*, and it was then said, that it had
“ been so resolved before, and there it was said *per*
“ *curiam* that *Fitz. Nat. Brev. 198. l.* is to be
“ understood where there is a special custome, that
“ the Land is deviseable, &c.

“ And he that shall conclude upon that place of
“ *Fitz. Nat. Brev. 198. l.* that all *Gavelkind* Land
“ is deviseable, &c. may as well conclude, that all
“ Lands

“ Lands in every City and Burrough in *England* is
 “ deviseable, which is not so, as appeareth by Mr.
 “ *Littleton*, who saith that in some Burroughs by
 “ custome a man may devise his Lands, &c.

“ And if *Gavelkind* Lands were deviseable by cus-
 “ tome, &c. Then a man may devise them by
 “ word without writing, as it is agreed in 34. H. 8.
 “ *Dyer*. 53. for a man may devise his Goods and
 “ Chattels by a Will *Nuncupative*, so may he like-
 “ wise devise his Lands deviseable by custome, be-
 “ cause they were esteemed but *tanquam catalla*, &c.
 “ and it would be a mischievous thing, if all the
 “ *Gavelkind* in *Kent* should be deviseable by word
 “ onely.

To these arguments and objections against the cus-
 tome, certain answers and exceptions by the learn-
 ed Counsel of the adverse party have been framed
 and returned in behalf thereof, reducible to three
 heads: which (to avoid all just suspicion of partiality
 and prejudice wherewith some zealous advocates
 and contenders for the custome have been, and
 may again be, ready to asperse me) I shall here sub-
 joyn; together with such answers and arguments (by
 way of reply) as I have received from the learned
 Counsel of the other side, in further and fuller refu-
 tation of theirs who endeavour to uphold the cus-
 tome.

*The learned Counsels arguments in behalf of the
 Custome.*

“ **F**irst, they deny the old book of 4. *Edw.* 2.
 “ *Fitzh. Mortdancer* 39. to be Law. But
 “ an Assise of *Mortdancer* lies of land deviseable,
 “ if

“ if it be true that his Ancestour died seized, un-
“ lesse it appears that the Defendant claims by some
“ other title. But if the Defendant plead that the
“ land is by custome deviseable, and was devised
“ unto him, it is a good barr of the action.

“ Secondly, They rely much upon the book of
“ *Fitzherb. Natura Brevium*, fol. 198. which sayes,
“ that a Writ of *Ex gravi querela* lies where a man
“ is seised of lands or tenements in any City or Bur-
“ rough, or in *Gavelkynd*, which lands are devise-
“ able by will time out of mind, &c. whence they
“ inferr that all *Gavelkynd*-lands are deviseable by
“ custome.

“ Thirdly, They cite the Treatise called *Consue-*
“ *tudines Cantie*, in the book called old *Magna*
“ *Charta*, and *Lambards* Perambulation of Kent,
“ fol. 198. that lands in *Gavelkynd* may be *given*
“ or *sold* without the Lords licence, and they inter-
“ pret the word *given*, to be by will; and the word
“ *grant*, to be by deed.

1

*The Reply to the fore-going Arguments, by such as
stand in opposition to the Custome.*

“ **A**S to the first Objection against the Argu-
“ ment taken from the Assise of *Mortdan-*
“ *cester*, they reply thus:

“ First, they maintain, that the Custome alone,
“ without an actual Devise is pleadable in abate-
“ ment to an Assise of *Mortdancester*, as well as
“ the Custome with an actual Devise is pleadable
“ in barr: for which there is not only that book
“ of 4. *Edw. 2.* but also *Bracton*, lib. 1. fol. 272.
“ *Ubi non jacet Assisa mortis antecessoris*, among
Y his

" his pleas in abatement of the Writ, (having be-
 " fore treated of pleas in barr to it.) *Cadit Assisa*
 " (sayes he) *propter consuetudinem loci, ut in Civi-*
 " *tatibus, Burgis, &c.* and 22. Assis. pl. 78. where
 " upon the like plea the Writ was abated: and
 " *Fitzherb. Nat. Brev.* fol. 196. I. (whose autho-
 " rity they think strange to be denied in a matter
 " of Law, wherein he was a Judge, and yet so
 " strongly relied on in a matter of fact and cus-
 " tome, in a place whereto he was a stranger :) and
 " so was it practised and allowed in *Itin. Johan.*
 " *de Stanton, 6. Edw. 2.*

" And the reason given by the book, why such
 " a custome is pleadable in abatement to this Writ,
 " is because the suggestion of the Writ may be true,
 " that the Ancestour died seised, &c. and yet the
 " heir have no title where the lands are devisea-
 " ble. And it is the property of this Writ, that
 " the dying seised must be traversed; and though
 " the Tenant plead the Feoffment of the Ancest-
 " tour, or other matter in barr, (that is not mat-
 " ter of *Estoppell* to the heir, as a Fine, Recovery,
 " &c.) yet must he traverse the dying seised, and
 " the Jury shall be summoned and charged to in-
 " quire, if the Ancestour *die quo obiit seisitus fuit,*
 " &c. and so are the books of 9. Assis. pl. 22. 27.
 " *Hen. 8. 12. Brooke Mortdancestor. 1. Old Nat.*
 " *Brev.* fol. 117. and diverse others. Nor is there
 " any opinion to be found in any book of Law a-
 " gainst that book of *Fitzherb. Mortdancestor, 39.*
 " until the 15th of King *Charles, Launder* and
 " *Brookes case, Crooke, lib. 1. fol. 405. obiter,* up-
 " on the trial of this custome.

2. " Admit that at this day the Law is held to be
" otherwise, yet it appears by all the authori-
" ties aforesaid, that in those times the Law
" was taken to be, that the *Mortdancestor* did
" not lie where there was such a custome: but
" it was a good plea in abatement of the writ.
" And yet Assises of *Mortdancestor* were then
" frequently brought and maintained of lands
" in *Kent*, as appears by *Bracton*, and the
" books abovesaid.

3. " Whether the custome alone be pleadable
" in abatement; or the custome with an actual
" devise be to be pleaded in barr, they say it
" cannot be shewn (if it can they challenge
" them to do it, who would maintain the
" custome) that it was ever pleaded one way
" or other, either in abatement, or in barr,
" to any one of all that multitude of Assises
" of *Mortdancestor* brought at large in that
" County, when in so small a City and County
" as *Canterbury* (where indeed there is such a
" custom) they shew it often pleaded to writs
" of *Mortdancestor* brought there before *Roger*
" *de Stanton* and other Justices in Eyre.

" Secondly, To the book of *Fitzherb. Nat. Brev.*
" fol. 198. upon the writ of *Ex gravi querela* (from
" whence the ground of this question sprung) they
" answer, that the sence and meaning of that book
" (no lesse than the Grammar of it duly observed)
" is no more, then that the writ of *Ex gravi que-*
" *rela* lies there where lands in any City or Town,
" or in *Gavelkynd*, are deviseable by custome. Not
" that all lands in Cities, and Burroughs, and in *Ga-*
" *velkynd*, are deviseable by custome. So that the

“ mistake ariseth by making that a categorical, which
 “ is but an hypothetical proposition: and serves ra-
 “ ther to ground an argument against the custome.
 “ For if the writ of *Ex gravi querela* does lie there,
 “ where there is such a custome; then (*à contrariis*)
 “ it may well be argued, that where a writ does not
 “ lie, there is no such custome: and it cannot be
 “ said to lie there (for *Fitzherbert* speaks of places:)
 “ where it was never brought.

“ They say further, that this writ of *Ex gravi*
 “ *querela* is a formed writ in the Register, appointed
 “ by Law as the proper remedy of the Devisee, where
 “ such a custome is: and that therefore it hath been
 “ required by the Judges, as a necessary proof of such
 “ a custom, that it be shewen that this writ hath
 “ been used to be brought there, where such a cus-
 “ tome is alleaged to be, 40. Assis. pl. 41. and the
 “ opinion of *Knivet*, 39. Assis. *Brooke*, Devise 43.
 “ In like manner, as to prove a custome of intail-
 “ ing Copy-hold-lands, it must be shewn that plaints
 “ in the nature of *Formedons* have used to be en-
 “ tred. (*Heydons* case in the third Report.) But
 “ they say that for proof of this custome in *Kent*,
 “ there is not onely (of 14. in the Register, which
 “ all conclude, *secundum consuetudinem Burgi*, or
 “ *Civitatis*) not one precedent of any such writ for
 “ *Kent*: but that it cannot be shewen that ever any
 “ writ of *Ex gravi querela* was brought for any lands
 “ in the county at large, out of some City or Town.
 “ And it is a question to whom such writ at large shall
 “ be directed, there being no form at all in the Re-
 “ gister of the direction of any such writ at large; the
 “ form there to a City or Burrough being either *Ma-*
 “ *jori Civitatis*, or *Burgi*, &c.

“ They

“ They say it could not be, but that question
“ must have arisen, (if not of the custome) whe-
“ ther a will or no will: for the trial of which
“ there was scarce any other course (at least, none
“ more ready) before the course of Ejectments grew
“ to be the practice, then either for the Devisee to
“ bring this writ of *Ex gravi querela* against the
“ heir being in possession, or for the heir being
“ ousted by colour of a will to bring his *Mort-*
“ *dancestor*. And therefore they think it not cre-
“ dible that (if such a custome were, and so exten-
“ sive as to the whole county of *Kent*) there should
“ be no Record, (if there be, they again challenge
“ the other side to shew it:) whether any Devisee
“ either brought this writ, or pleaded this custome,
“ (and pleaded it must be, as themselves acknow-
“ ledge, and is resolved in *Launder* and *Brookes*
“ case:) for any lands within the county of *Kent*
“ out of some City or Burrough: when as they are
“ confident to say, that there is not any custome
“ used in *Kent*, and that extends through the whole
“ county, but Records may be shewen where it hath
“ at some time been judicially pleaded and allowed.
“ They add, that Customes, being special Laws,
“ are suted to the place where they are used; and
“ that this is a custome very proper and sutable in
“ Cities and Burroughs, among Merchants and
“ Tradesmen, that they might dispose of their houses
“ together with their personal estates: and that the
“ pleading of this custome in all Writs and Records
“ is, that they are *legabilia, tanquam bona & ca-*
“ *talla*. And therefore by the books of 40. Assis.
“ pl. 41. and *Cokes* 1. Instit. 110. it is held that this
“ custome cannot be alleaged in any upland Town.

“ Then

“ Then how improper is it that all the estates in
 “ so great a county should be of no other nature (in
 “ this respect) than goods and chattels, and liable
 “ to be disposed and carried away by words catcht
 “ from dying men? which (they say) may serve too
 “ for an argument against the pretended benefit and
 “ utility of this custome; especially when the mul-
 “ titude of controversies, arising upon wills, have
 “ made it a question, whether it had not been bet-
 “ ter the Statutes, of 32. and 34. *Hen. 8.* of wills,
 “ had never been made.

“ And therefore (they say) that in *Wyld's* case,
 “ in the 6th Report, which was resolved by all the
 “ Judges of *England*, it is said expressly (and no
 “ doubt upon good consideration) that at the Com-
 “ mon Law, lands were not deviseable but by cus-
 “ tome onely in Cities and Burroughs, *Houses and*
 “ *such small things.* And in *Matthew Menes* case,
 “ in the 9th Report, where the will was of *Ga-*
 “ *velkind*-lands in *Kent*, and a house holden in
 “ *Capite*, it is all along held, that the will there
 “ was enabled by the Statute, and puts a case of lands
 “ in *London* deviseable by custome, as a stronger
 “ case; which certainly it were not, if lands in
 “ *Kent* were so deviseable.

“ The third objection from the words (*doner ou*
 “ *vender*) they say, deserves no answer more than
 “ this, that the same words are used, that the In-
 “ fant may *doner* or *vender*, give or sell, his estate
 “ at the age of fifteen, and that no man will say,
 “ that he may at that age make a will.

Thus have you the learned Counsels arguments
 (faithfully exhibited) both for and against the custom
 of devising *Gavelkynd*-land in Kent, before the Sta-

tutes of 32. and 34. *Hen.* 8. concerning the devising of lands by will. Treading (as I said) in the steps of those who oppose the custome, give me leave, by the way of Corollary, to add somewhat, haply not improper to be hinted and insisted on in this argument. Besides then the repugnancie in this custome, to the common opinion both of ancient and modern^a Lawyers, it fights with the very nature of Fee, (comprehending, at least with us, *Gavelkind*, as holden by the Tenant *in Dominico suo ut de Feodo*) which, though Fees are with us, as in France and elsewhere, become^b patrimonial, and so alienable by gift or sale followed with Seisin in the Alienators lifetime; yet by the feudal^c Law, are indisposeable by will, several reasons whereof are found rendred by the^d Feudists. And as it is inconsistent, and at variance with the common opinion of Lawyers, both at home and abroad, so withall, and above all, it makes *Gavelkynd* degenerate from it self, and its first original, which our^e Lawyers and Antiquaries, by an unanimous vote, referring to the Germans, vouch for it that, amongst other of their Customes published by *Tacitus*: *Hæredes successoresque sui cuique liberi, & nullum testamentum*: a passage, or authority, equally insisted on by the Feudists to warrant their^f *Nulla ordinatione defuncti in feudo manente vel valente*, prohibiting the disposal of Fee by will, and of our municipal Lawyers and others, as for the like, so withall to illustrate the original of our^g *Gavelkind*.

But that which in this case (as to matter of fact) very much, if not most of all, works with me, (what it may with others I know not) and induceth me to an utter dis-belief and rejection of this Custome, is certain passages and clauses in several wils extant and

^a *Glanvill*, lib. 7. cap. 1. & 5. *Bracton*, fol. 18. b. fol. 49. a. fol. 272. a. fol. 407. b. fol. 409. b. *Britton* with others cited by Dr. *Cowell*, *Instit.* lib. 2. tit. 20. num. 7. *Coke upon Littleton*, fol. 111. b. *Linwoods Provincial. de Testam.* c. Statutum, parag. testamentis, vers. legari possunt.

^b *Bract.* lib. 2. cap. 19. lib. 4. tract. 3. cap. 9. num. 5. *Cujac. de Feud.* lib. 1. tit. 2. & lib. 4. tit. 19.

^c *Lib.* 1. tit. 8. de success. feud. & *Vultei* lib. 1. cap. 9. num. 70.

^d *Hotoman* upon that place of the Feuds.

^e *Lamb. Peramb.* pag. 528. & *Spelm.* *Glossar.* verb. *Gavelletum*.

^f *Feud.* lib. 1. tit. 8. de success. feud. & *Hotoman.* *ibid.*

^g *Lamb.* & *Spelm.* ubi supra.

and to be found in our Registers at *Canterbury*, and in that at *Rocheſter*, intervening and happening in the interim of thoſe two Statutes; the one of *Uſes*, made anno 27. the other, of *Wills*, inacted anno 32. *Hen.* 8. (a time moſt proper for the Cuſtome, if any ſuch in being, by its fruits, the immediate free deviſe of lands by will, at pleaſure, without that meditate, collateral and by-way, that *periphrasis*, of Feoffments and their Uſes, which now was out of doors; to aſſert and ſhew it ſelf :) all which (in my opinion) do plainly tend to the diſ-proof of this cuſtome of deviſing lands in *Kent* by will, before that Statute of wills. As for example.

1. In the will of *Thomas Bourne* of *Tenterden*, dated 3. May 1538. in the Archdeacons Registry at *Canterbury*, lib. 21. quatern. 7. *And where* (ſaith he) *there is an Act lately made to avoid uſes of wills, yet my mind is that Clement my ſon ſhall have my houſe and ſhop in Tenterden with th' appurtenances to him in fee. And that John Bourne my ſon ſhall have all my lands lying in the pariſh of Hawkherſt to him and his heirs in fee. And I give to my ſaid ſon John xl. s. upon condition that he will abide and ſtand to the dividing and order of my lands, as my mind is before expreſſed. And if he will not ſtand to, and abide the ſaid order and diviſion, but to ſhift his part throwly, then I will the ſaid xl. s. ſhall remain and be had to Alice my wife. Alſo I give to Clement my ſon iiij. l. upon condition that he do ſtand to and abide the diviſion and order of my lands and tenements, according as my mind is before expreſſed. And if the ſaid Clement do reſuſe my ſaid order and diviſion of my lands, and ſhift his part throwly, then I will the ſaid iiij. l. ſhall remain and be had to Alice my wife, &c.*

Argument.

Had there been a Custome for devising lands by will, what needed that notice to be taken here of the Act for avoiding uses of wills? And why is the Testator put to it thus, to work and wage his sons to consent to that partition and division of his lands, by a Legacie in money to be forfeited upon their refusall, and for choosing to shift or divide throughly, as a thing in their power by Law, which could not be, had there been any such Custome.

2. In *Thomas Sayer*, alias *Lamberds* will of *Feversham*, dated in May 1538. in the same Registry and Book, quatern. 9. some lands are devised away from the two female Inheritrices, to be sold: and a partition also made between them of other lands. Whereupon a Legacie in money is given to the heirs at Law, to wage them to consent and condescend to that devise and division, in these words:

Item I will and bequeath to Isabel and Margaret my two daughters, to each of them 6. l. 13. s. 4. d. to be paid to them by Benet my wife in money, or money-worth, in four years next after my decease, upon condition that my said two daughters, their Heirs and their Assigns, to suffer this my present will and testament to take effect, according as I before have willed. And if my said two daughters, their Heirs and their Assigns do this refuse, that my said will can take none effect, according as I before have willed, then I will my said two daughters, nor their Assigns, shall take no benefit nor profit of none of my bequeaths to them before bequeathed, &c.

Z

Argument.

Argument.

The same *Quere* here as before, *viz.* What needed this conditional Legacie in money, had it not been free to them and in their power and choice, whether his will (for the sale of some land, and for the division of other) should take effect, or not?

3. In *John Crowmers* will of *Fogylston* Esquire, dated in February 1538. in the same Registry, book, and quatern. this clause to our purpose is remarkable.

Item I will that each of my three daughters, Benet, Elizabeth and Grace, have 13. l. 6. s. 8. d. of such debt as their husbands do ow me : so that their husbands be content that such lands as I have purchased go according to my devise and will, or else not, &c.

Argument.

The like *Querie* here as before. Where also note, that although he mention a devise of lands by will; yet no such will is either proved or registered, because (probably) null and void in Law. The like whereof may be supposed of *Sparcklins* will of *Thanet*, dated in March 1539. in the same book and Registry, quatern. 14. where his mansion place at *Bronston* is said to be bequeathed to his son *John*: whereas no such thing appeareth by the approved will; nor is any land at all devised by it. The like may be said of *Cacherells* will of *Norborne*, dated anno 1537. in the same Registry and book, quatern. 8. where some Legacies
in

in money are charged upon a house there said to be given to the party charged and his wife, whereas no such gift appeareth by the will.

4. In *Sarlys* will, dated anno 30. *Hen.* 8. in the same Registry and book, quatern. 11. where he maketh mention of his three daughters, we have this clause:

Item, I will that he (my brother) shall have my part of my house at Wy, called Jancocks, during his life, if that may be suffered by the Law, &c.

5. In the will of *William Byx* of *Linsted*, dated 1538. in the same Registry, lib. 22. quatern. 1. occurs this passage:

I will and bequeath all the profits, commodities, fermes, rents, of all my lands whatsoever, &c. unto my brother germane, Laurence Byx, unto the times that my sons, Laurence and Nicholas, come to the age of 22. years, &c. Also to my daughters marriage 10. l. to be raised out of those profits, &c. and paid by my brother Laurence. Provided alway, if the Law will not suffer nor admit my brother Laurence to enjoy and take up the fermes, &c. of my lands, then I will that each of my said sons, &c. shall pay the said 10. l. unto my said daughters marriage, &c.

6. *Thomas Hunt* of *Pluckly* in his will, dated in the year (no moneth) 1540. (probably some time before the Statute of Wills that year made) in the same Registry, book and quatern. gives to his wife the issues of his lands for life, and after her death the lands themselves to his son *John*, charged with some Legacies in money to his younger brother *Anthony* and his children: but with this *Proviso*:

If this my will (saith he) stand not good and effectually in the Law, then I will that my said mesuage and premisses after the death of my said wife
Z 2 *shall*

Argument.

The same *Quære* here as before, *viz.* What needed this conditional Legacie in money, had it not been free to them and in their power and choice, whether his will (for the sale of some land, and for the division of other) should take effect, or not?

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If this my will (saith he) stand not good and effectually in the Law, then I will that my said mesuage and premisses after the death of my said wife

shall remain to my said two sons I. and A. and to their heirs for ever, &c.

7. The like clause to this occurs in the will of *John Hubberd of Westerham*, dated the 23th of July 1537. in the Bishop of *Rocheesters* Registry: *viz.*

Also if it do please God to visit my wife and all my children with death, then I will that Richard Hubbard, the son of William Hubbard of Lynsfield shall have my house and all my land, if that the Law will suffer it: paying therefore to every one of my sisters, Agnes, Katherine and Margaret, three pounds six shillings and eight pence, to be paid within the space of two years next after my decease.

8. Nor is this passage lesse pregnant and pertinent to our purpose, taken from the will of *John Stace of Leigh*, dated the 18th of March 1538. in the same Registry.

And also I will that if the Kings last Act in Parliament will not stand with my wife to enjoy the one half of my lands, I will then that mine Executour shall pay yearly to Agnes my wife xl. s. during the term of her life, and that to be paid quarterly at the four usual terms by equal portions, &c.

Argument.

In these five last wills mentioned (*Sarlys, Byx, Hunt, Hubberd and Staces*) what means that doubt and question in the Testators, whether their devises (of houses and lands) were good, or would hold and stand firm in Law, had there been such a Custome, and had not the Law been clear otherwise in this case, as well in *Kent* as elsewhere?

I observe also, that in the interim of 27. and 32. *H. 8.* some few (and indeed but very few) wills there are in the Registers at *Canterbury*, wherein lands are devised: some with Feoffment, and some without, at least without mention made of any. As for the former, those with Feoffment, I find the most of them dated, though in or after the year 27. yet before the sixth of May 28. year of that King, until when the Act was not to come in force. Besides, happily the Feoffment was made before the Statute, and so could not be revoked (as I conceive) without the Feoffees consent. As for the rest (those without mention of Feoffees) some of them were of our City (*Canterbury*) or the like places, where by particular Custome they might devise. Others (happily) had Feoffments, although not mentioned. If not, they were no other (I conceive) than wills *de facto*, or *de bene esse*, made: nor did or could otherwise, or further operate, inure, or take effect than the interested or concerned parties should give way: with whom in those elder times (times of more and greater regard and reverence to the will of the dead than the present) the dying parent, or kinsmans mind declared in his will, bare so great a sway, and did so much prevail, as to persuade with them to renounce an advantage to themselves, for the fulfilling of the deceaseds solempne and declared mind. Besides, it follows not, that because such wills and devises are found, therefore they passed and were allowed of as good and effectually: the contrary whereof is more than probable by the *ifs* and *conditions* found in other wills of those times, arguing plainly the Testators distrust and doubt of the validity, and consequently of the

the successe and effect of his devise, whercof examples are laid down before.

Before I close and wind up all, I have onely this to add, by way of offer, from the party opponent to this Custome, and his Councel, (which, as a matter much considerable, I may not pretermit :) that, whereas that abundance of wills wherein lands are devised without mention of Feoffees, found and produced from the Registries both of *Canterbury* and *Rochester*, is much insisted on in behalf of the Custome: if from the Registries of any other Diocese out of *Kent*, (where such devises never did, nor could obtain, until the Statute of Wills) of equal circuit and extent to either of these, the very same thing may not as truly be observed, and a proportionable number and quantity of such kind of wills, (wills of lands devised without mention of Feoffees) cannot be produced, and consequently the argument and inference thence drawn (for the Custome) eluded and avoided, they will sit down convinced, and with their adversaries subscribe unto that argument. An offer (this) in my judgement so fair, ingenuous and plausible, as not to be rejected of any, but such as out of a cavilling spirit, are resolved to turn the deaf ear upon all fair and equal proposals: that I say not, such as, for maintenance sake, make it their study, *quocunque modo*, to maintain their spurious interest. But that I may not seem to be (what indeed I am far from being, any otherwise than in truths behalf) a partisan in this businesse, I shall forbear all further censure, and if I may but have the Readers leave to make my Epilogue, I shall, with thanks to him for that, and the favour of all his other patience, quit the stage of my discourse on this whole argument, and make my *Exit*. Ma-

Many other things offer themselves to his discourse, Peroratio, that would treat of *Gavelkind* to the full; but they are (I take it) mostly points of Common Law, which because they are not only out of my profession, but besides my intention too, which was to handle it chiefly in the historical part, and that no further than might conduce to the discovery of the *Primordiae*, or beginnings of it, I will not wade or engage any further in the argument, lest I be justly censured of a mind to thrust my sickle into another mans harvest: onely (for a close) craving leave to supply the common Kentish Custumal, at the end of Mr. *Lambards* Perambulation, with one clause, which, according to an ancient copy registred in a quondam book of St. *Augustines* Abbey at Canterbury, now remaining with my very noble and learned friend Sir *Roger Twysden*, is to come in at pag. 574 lin. 2. after these words: *Que de lay est tenu sans men. viz.* (as that old copy goes on there:) *E si home ou femme seit feloun de sei mesmes qe il sey mesmes de gre se ocye, le Roy aura les chartouz tuts & nient l'an ne le wast, mes le heir seit tautost enherite sans contredit, kar tout seit il feloun de sey mesmes, il neyt my atteint de felonye. Et clayment auxi, &c.* as it follows in that printed Custumal. Which clause, as I conceive, may be thus Englished: *And if a man or woman shall be a Felon of him or her self, who shall kill him or her self of his or her own accord, the King shall have all the Chattels, and not the year and the waste, but the Heir shall immediately inherit without contradiction: for albeit he or she be a Felon of him or her self, he or she is not attainted of Felony.*

A clause wanting in the printed Kentish Custumal supplied.

Now craving pardon for what liberty I have taken to deliver my sence, and give my conjecture, on severall occasions here emergent, I shall here cut the thred of this Discourse, wishing that as I have not spared freely to speak my mind, so that every man that pleaseth, should assume the like liberty, not suspecting me so opinionate of mine own vote, as to wish, much lesse to beg, least of all to importune any unwilling mans concurrence, though haply unprovided of a better of his own, disclaiming that magisterial boldnesse of him arrogated, that said once upon a like occasion :

——— *si quid novisti rectius istis
Candidus imperti, si non, his utere mecum.*

And (to wind up all) wish every man, in what he stands in doubt of, to be his own *Oedipus*.

*Ovid. de pont.
lib. 3. El. 9.*

*Da veniam scriptis : quorum non gloria nobis
Causa ; sed utilitas, officiumque fuit.*





A N
 APPENDIX
 O F

Such MUNIMENTS (viz. CHARTERS, and other ESCRIPTS) as are quoted in the precedent Discourse, with reference to this place for transcription.

Charta pervetusta de terrâ ad Censum concessâ. Vide pag. 50.



ARNULFUS Prior, & tota Congregatio Ecclesie Christi, omnibus fidelibus & amicis suis salutem. Sciatis nos, consentiente Archiepiscopo^a Anselmo, concessisse Calvello & heredibus suis extra civitatem circa castellum, novem partes terræ, inter terram arabilem & prata, eâ conventionem
 Scriptura i;
^a This (it seems) was before he granted them liberam dispositionem rerum suarum, whereof in Eadmer. Hist. Novor.
 ut pag. 108.

3. Forisfactu-
ra.

Redemptio.

*ut ipse Calvellus & heredes sui singulis annis
dent Celerario liij. sol. pro omni re, præter
tres forisfacturas, id est, murdrum, & fur-
tum, si ipse Calvellus vel heredes sui fecerint,
& præter si verecundiam ipse sive heredes
sui fecerint monachis Ecclesiæ vel fervientibus
eorum. Horum verò denarior. una medietas
dabitur in mediâ Quadragesima, & altera in
festo S. Michaelis. Calvello autem mortuo,
pro redemptione quam heredes facere solent,
heredes sui xx. sol. dabunt, & Censum quem
pater prius dederat, ipse deinceps similiter
dabit. Testes horum sunt Folbertus de Cill,
Will. Folet, Rogerius filius Herengodi, Ro-
bertus de Mala villa.*

[Note that this Charter hath a seal appendant on a
labell proceeding from the side-margent, round,
and about the bignesse of a five shillings peece of
silver, the wax yellow, stamped; but on the one
side with the form of a Church, much like that
in the old seal of St. *Augustines*, in Sir *Henry
Spelmans* Councells, pag. 122. The inscription in
the ring of it this:

✠ SIGILLVM ELLLESIAE CRISTI.]

Charta Priori consimilis.

Wibertus Prior & Conventus Ecclesiæ Christi Cantuar. omnibus fidelibus suis, tam presentibus quam futuris Salutem. Sciatis nos concessisse Goldwardo filio Feringi terram quæ fuit Walteri de Sartrino servientis nostri, Mariæ uxoris suæ, & item terram quæ fuit Mariæ filiæ Richardi aurifabri, simul cum propria terra sua in qua Feringus pater suus manebat, pro iiij. s. & iiij. d. & ob. quos nobis inde annuatim reddet ad duos terminos, ij. scil. solid. & iiij. denar. & ob. ad med. Quadrages. & ij. s. ad festum S. Michaelis. Tenebit itaque prædictus Goldwardus de nobis has terras bene & in pace & honorificè jure hereditario per superscriptum censum, & licebit ei de ipsis tanquam de propriis liberè facere quod voluerit, salvo jure & redditu nostro. Ita tamen quod si eas alicui dare voluerit vel vendere, nobis prius hoc indicabit, & nos ad emendum eas^b proximiores esse debemus. Terra illa jacet juxta murum

Scriptura 2.
Vide pag. 50.

^b Simile habes in LL. Burgor. apud Scotos. c. 100.

Eleemosynariæ nostræ. Testibus Bartholomæo Dapifero, Will^{mo} Camerario, Geldewino & Johanne, Cocis; & multis aliis.

Alia Charta de terrâ ad Gablum concessâ.

Scriptura 3.
Vide pag. 50.

Robertus Monachus Ecclesiæ S. Augustini, Custos & Procurator Hospitalis beati Laurentii, Omnibus Christi fidelibus Salutem. Sciatis me concessisse Hamoni textori & heredibus suis duas acras terræ contra Sanctum Sepulchrum, pro duob. solidis de Gablo, singulis annis, jure hereditario tenendas. Medietatem autem dabit in media Quadragesimæ, & medietatem alteram in ad Vincula S. Petri, & tres gallinas in vigilia Natalis Domini. Valeat. Testibus Alurico presbytero, Lidulfo, Will^{mo} textore, & fratribus illius loci.

Charta de terrâ ad Gavelikendam concessâ.

Scriptura 4.
Vide pag. 38.
& 51.

Sciant præsentēs & futuri quod ego R. Dei gratiâ S. Augustini Cantuar. & ejusdem loci Conventus

Conventus dedimus Jordano de Serres & heredibus suis ad Gavelikendam, xl. acras Gavelikend. de marisco nostro p̄tinentente ad manerium nostrum de Cistelet, cum pertinentiis suis, Tenend. de nobis jure hereditario in perpetuum. Reddendo inde nobis annuatim vij. solid. & vj. denarios sterlingorum ad Curiam de Cistelet, in duobus terminis anni, in Nativitate Domini iij. s. & ix. d. & in Nativitate Johan. Baptistæ iij. s. & ix. d. Et pro hac concessione dedit nobis p̄dictus Jordanus C. s. sterling. de Gersume. Ut igitur ista donatio stabilis & firma permaneat sigilli nostri munimine eam roboravimus. Hiis testibus Henrico de Cobbeham, Galfrido de Stokes, Stephano de Marisco, Philippo de Fierport, Godefrido del hac, Bricio del hac, Waltero filio Roberti, Gileberto fratre Abbatis, Will^m Pincerna, Wido Janitore, W. Coco, Alex. Hostiario, & multis aliis.

Apographum processus litis inter *Burgam de Wending*, & Priorem & Conventum Ecclesiæ Cantuar.

Scriptura 5.
Vide pag. 51.

De toto manerio de *Welles* coram *W. de Ebor*, *R. de Turkeby*, *G. de Preston*, & sociis suis itinerantibus apud *Cantuar.* 3. Id. Junij, Anno Domini 1241. *R. H. filii R. Johannis* 25.

Francus Bancus.

Burga quæ fuit uxor Petri de Wendings petit versus Priorem S. Trinitatis Cantuar. medietatem manerii de Welles sicut Francum Bancum suum, ad faciendum firmam xviii. dierum, & unde prædictus Petrus quondam vir suus eam dotavit, &c. Et Prior, scil. Rogerus de Lee venit & dicit, quod habet manerium illud ex dono prædecessorum Domini Regis, qui illud manerium aliquando tenuerunt. Et quod illud manerium dederunt Deo & ecclesiæ S. Trinitatis adeo liberè sicut manerium illud tenuerunt in puram ac perpetuam eleemosynam: ita quod illud manerium nunquam postea partitum fuit, nec est partibile. Et dicit quod Dominus Rex qui manerium

manerium illud dedit prædecessoribus suis, non tenuit illud nomine Gavelkinde. Et è Gavelkinde. contra Burga dicit, quod prædictum manerium est Gavelkinde, & partibile, ita quod quidam Robertus de Maloignes, Dominus de Sutton, qui duxerat in uxorem Matildam de Welles, cujus hereditas illud manerium fuit post mortem illius Matildis, habuit nomine Franci Banci, medietatem illius manerii, & Petrus vir illius Burgæ habuit medietatem illam ex dono Hervei Bellet consanguinei ipsius Burgæ, postquam idem Petrus desponsavit ipsam Burgam, qui quidem Herveus redemit medietatem illam per denarios suos de prædicto Roberto, ad opus ipsius Petri ac Burgæ. Et quod ita sit offert Domino Regi xx s. per sic quod inquiretur per patriam. Et Prior dicit quod prædictum manerium non est Gaulikend, neque partibile, nec prædictus Robertus unquam habuit ibidem medietatem prædicti manerii ut de Franco Banco suo. Et quod ita sit ponit se super patriam. Et ideo fuit inde, &c. Juratores viz. R. de Setvann, I. de Esking, S. de Creie, G. de Dene, W. de Okrindenn, A. Perot, E. de Bodon, S. de Haute,

Verdictum.

Haute, B. de **Badlesmere**, R. de **Chilham**, & Alanus de **Leghes**, dicunt super sacramentum suum, quod prædictum manerium fuit quondam manerium Domini Regis. Et quod datum fuit Deo & Ecclesiæ S. Trinitatis in liberam, puram & perpetuam eleëmofynam. Ita quod manerium illud nunquam fuit **Gaulikende**, nec partitum, nec est partibile, nec prædictus Robertus nunquam habuit medietatem prædicti manerii nomine Franci Banci. Set dicunt quod post mortem prædictæ Matildis, tenuit prædictus Robertus totum manerium illud simul cum custodiâ prædicti Petri. Ita quod prædictus Herveus dedit quandam summam pecuniæ prædicto Roberto pro custodiâ illâ. Et ideo consideratum est, &c. quod Prior teneat, &c. & sine die, & prædicta Burga in misericordia.

Judicium.

Carta de terrâ ad **Gabelikende** concessâ.

Scriptura 6.
Vide pag. 38,
& 55.

Alanus Prior & Conventus ecclesiæ Christi Cantuar. Omnibus Christi fidelibus ad quos literæ istæ pervenerint Salutem. Volumus ad omnium notitiam pervenire quod nos concessimus

*cessimus & assignavimus Theb. de Eines-
ford & heredibus suis quater viginti acras de
Dominio nostro in Northocholt, tenendas
de nobis ad Gavelikende. Reddendo inde nobis xx s. singulis annis, x. in med. Quadrag.
& x. ad festum S. Michaelis. Hanc tamen
hac conditione ei tenebimus si mansionem &
domos suas super prædictam terram fecerit.
Debet insuper tam ipse quam heredes sui se-
qui curiam nostram de Drpinton sicut ce-
teri homines de eadem villâ.*

Charta priori consimilis.

*Alanus Prior & Conventus ecclesiæ Christi
Cantuar. Omnibus Christi fidelibus Salutem. Sciatis quod nos concessimus & assignavimus
Stephano de Kenardintone C. acras de
marisco nostro inter wallas Monachorum Pon-
tis Roberti, & Oxeniam, ita quod debet ha-
bere illas C. acras post alias C. acras quas in
eodem marisco dimisimus Stephano militi de
S. Martino, usque ad C. illas acras quas di-
misimus Solomoni de Gellings. Concessi-
mus autem has prædictas C. acras eidem Ste-
phano de Kenardintone & heredibus
suis*

Scriptura 7.
Vide pag. 38.
& 55.

Gavelichende. *suis ad Gavelichinde. Reddendo inde nobis duas marcas argenti singulis annis, ad duos, viz. terminos, infra octavas Nativitatis S. Johannis Baptistæ unam marcam, infra octavas S. Michaelis alteram marcam, pro omni servitio, nisi quod debet wallare secundum quantitatem illius terræ intus & extra, tam contra salsam quàm contra frescam, sicut ceteri, & Curiam nostram sequi. Jura etiam Cantuarien. ecclesiæ, & in hoc & in aliis, quantum ipse potest cum ratione tueri & defendere. Hæc autem omnia sacramento corporaliter in capitulo nostro præstito juravit se fideliter observaturum. Hiis testibus Godefrido coco, Stephano portario, Bartholomæo seneschallo, Will^{mo} de Capes, Roberto Porter, & multis aliis.*

Alia Charta consimilis.

Scriptura 8.
Vide pag. 38.
& 55.

Om nibus ad quos præsens charta pervenerit Gaufridus Prior & Conventus ecclesiæ Christi Cantuar. Salutem. Noverit universitas vestra nos concessisse Joni & heredibus suis Berchariam nostram ducentarum ovium, scil. medietatem de Osmundeseve in terra & marisco

marisco cum una salina, Tenend. de nobis
 successivè ad **Gavelykende** ita plenè & ^{Gavelykende.}
 integrè sicut eam unquam Rogerus de **Os-**
mundeseve tenuit. Reddendo inde nobis
 annuatim lvi. s. de redditu ad duos terminos,
 scil. ad festum S. Johannis Baptistæ xxviij. s.
 & ad festum S. Michaelis similiter viginti octo.
 Post mortem verò prædicti Jonis dabunt nobis
 heredes sui successivè de Relevio lvi. s. ^{Relevium.} Da-
 bunt etiam idem J. & heredes sui post ipsum
 nobis annuatim ad Natale Domini unum
 Mathlardum, & unam Annatem, & qua-
 tuor cercellas, & ad Pascha unum caseum,
 & unum agnum de **Present.** ^{Present.} Super hoc
 sciendum, quod prædictus J. & heredes sui
 Curiam nostram de **Leydan** sequentur, &
 in auxiliis dandis & Scottis sicut alii Tenentes
 nostri scottabunt. Et inde ipse & heredes
 sui successivè salvos plegios invenient de red-
 ditu terminis statutis reddendo, & de Bercha-
 riæ instauratione integrè & fideliter conser-
 vanda.

Alia consimilis Charta Hospitali data.

Scriptura 9.
Vide pag. 38,
& 55.

Gavelekende.

*Sciant presentes & futuri, quod ego Radulfus Frone tradidi & concessi Deo & fratribus Hospitalis S. Laurentii juxta Cantuariam, in orientali parte siti, septem acras terræ meæ tenendas in **Gavelekende** de me & heredibus meis liberè & quietè. Reddendo inde annuatim mihi vel heredibus meis xliij. denarios, pro omni servitio, & omni exactione in duobus terminis, scil. in med. Quadragesimâ xxj. denar. & in festo S. Michaelis xxj. denar. Prædicta autem terra nominata est **Pretesteghe**, quæ adjacet terræ Helix de **Blen**. Pro hac donatione & confirmatione dederunt mihi prædicti fratres & heredibus meis quinque marcas sterlingorum. His testibus Johanne clerico, filio Henrici Sacerdotis, &c. & pluribus de Halymot.*

Inquisitio de terris & tenementis quæ *Isabella* de Monte alto tenuit de Priore ecclesiæ Christi Cantuariæ.

Scriptura 10.
Vide pag. 58.

*Inquisitio facta apud **Hokynnden** coram Eschaetore Domini Regis die Mercurii prox. ante*

ante festum S. Catherinæ virginis, anno R. R. Edwardi secundo, de terris & tenementis quæ Isabella de Monte alto tenuit de Priore Ecclesiæ Christi Cantuariæ, & per quod servitium, per sacramentum Will^{mi} de Cokeler, &c. qui dicunt per sacramentum suum, quod prædicta Isabella tenuit in Gavelikende Gavelikende.
die quo obiit de prædicto Priore unum messuagium, xlij. acras terræ cum pertinentiis in Hokinden, per servitium decem solid. undecim denarior. per annum, & per servitium arandi unam acram terræ ad seminandum frumentum, quod valet xij. d. per annum. Et per servitium metendi prædictam acram & cariandi in Grangiam Prioris apud Orpinton blada ejusdem acræ, quod servitium extendit per annum ad xij. d. Et per servitium arandi dimidiam acram terræ ad seminandum frumentum, & dimidiam acram terræ ad seminandum ordeum, & utramque dimidiam acram metendi & ligandi, quod quidem servitium extendit per annum ad ij. s. Et per servitium solvendi unam denar. & obulum ad falcandum pratum Domini Prioris, & per servitium cariandi unam caretatam & dimidiam feni in Grangiam Prioris apud Orpin-

Ozpinton, & valet per annum iij. denar.
 Et per servitium faciendi duo averagia de
Ozpinton usque **Bepham** per annum,
 & valet opus viij. denar. Et per servitium
 claudendi tres peticatas circa Gardinum Pri-
 oris prædicti apud **Ozpinton**, & valet
 opus iij. d. per annum. Et per servitium
 duarum gallinarum & xl. ovorum, & valet
 per annum vj. d. pretium gallinæ ij. d. Et
 per servitium faciendi sectam ad curiam præ-
 dicti Prioris de **Ozpinton**, de tribus septi-
 manis in tres septimanas. Et dicunt quod
 prædicta Isabella obiit per tres annos elapsos,
 & quod averagia à tempore mortis prædictæ
 Isabellæ usque in hodiernum diem sunt l. s.
 j. d. ob.

Summa totius per annum -- xvj. s. -- viij. d. -- ob.
 Unde de redditu assis. ----- x. s. --- xj. d. --
 De Consuetudinibus ---- v. s. --- ix. ---- ob.

Servitia Tenentium de **Rokinge** ad red-
 ditum posita.

Scriptura 11.
 Vide pag. 60.

Memorand. quod in festo S. Michaelis,
 anno Dⁿⁱ Mcclxxxix. regni verò Regis Ed-
 wardi

wardi xvij. Prior & Conventus ecclesiæ Christi Cantuar. relaxaverunt Tenentibus suis de **Ro-kinge**, viz. falcationem, levationem, cariagium, & tassationem prati. Item cariagium, impletionem & sparsionem fimorum, facturam cratis, & **Burghyard**. Item **Burghyard**. averagia apud **Merseham**. Item fotaveragia. Item messionem & herciaturam & collectionem stipularum. Item cooperturam grangiarum, & tonsionem ovium. Et pro ista relaxatione, prædicti Tenentes solvent annuatim ad manerium prædict. in festo omnium Sanctorum, & ad Purificationem beatæ Mariæ redditus subscriptos pro equali portione. viz. Robertus le Frode de xij. acris & dimid. iiij. s. ij. d. ob. Timberdansland pro viginti sex acris iiij. s. ij. d. ob. Terra Heymund pro novem acris iiij. s. ij. d. Terra Juliani pro viginti acris iiij. s. j. d. ob. Stameresland pro undecim acris ij. s. viij. d. Terra Smalþon pro tresdecim acris ij. s. iiij. d. Terra le Bred pro octo acris & dimid. xvj. d. &c.

Relaxatio

Relaxatio servitiorum & consuetudinum Tenentium de **Wepham**, pro annuo redditu solvendo.

Scriptura 12.
Vide pag. 61.

Gavellond.

*Universis pateat per præsentes quod in festo Nativitatis Domini, Anno ejusdem Mcccvj. Regni verò Regis Edwardi filii Regis Henrici xxxv. Henricus Prior & Capitulum ecclesie Christi Cantuar. remiserunt & relaxaverunt hominibus & tenentibus suis de **Wepham** quasdam consuetudines & servitia pro annuo redditu quinquaginta septem solidorum trium denarior. & unius oboli eisdem Priori & Capitulo in prædicto manerio suo de **Wepham** in festo Apostolorum Petri & Pauli annuatim solvend. in formâ subscriptâ, viz. Tenentes de **Gavellond** de octodecim jugis, pro cariagio triginta & sex carectat. feni de prato de **Redhamme** apud **Clyve** usque **Wepham**, quindecim solidos, viz. pro quolibet carectat. quinque denarios. Et unum dimidium jugum est in Dominico. Item pro averagiis tresdecim solid. & quatuor denar. Item pro clausura circa blada duos solidos, undecim denar. & obulum. Item pro clausura*

*fura circa Curiam quæ dicitur **Burghyard**, Burghyard.
viginti duos denar. obulum & quadr. Item
Tenentes de sex Jugis & dimid. de **Inland** Inland.
pro trituratione & ventilatione triginta &
quinque quarteriorum frumenti, novem solid.
quinque denar. obolum & quadr. viz. pro
trituratione cujuslibet summæ tres denar. &
pro ventilatione unum quadr. Item pro tri-
turatione & ventilatione septemdecim grossa-
rum summarum & dimid avenæ, tres solid.
tres denar. & unum quadr. viz. pro tritura-
tione cujuslibet summæ duos denar. & pro
ventilatione unum quadran. Item pro opere
sarclandi octodecim denar. Item pro opere
tassandi in autumpno tresdecim denar. Item
pro fimis spargendis sex denar. & obolum.
Item pro xvij. ^a Cladibus faciendis ad Ovile * f. Cloils, vel
Clais. Vid.
Spelm. Glof-
far. in voce.
Worderinde.
sex denar. Item pro cibo Prioris querend.
& pro servitio quod dicitur **Worderinde**,
& pro pomis frangendis duodecim denar.
Item pro clausura circa blada, quæ dicitur
Swinhey, duos solidos, decem denar. & Swinhey.
quadr. Item pro clausura xvj. perticarum
& quinque pedum muri infra Curiam ab ostio
Aulæ versus Portam Curie xvj. denar. &
obol. Item pro grangia cooperienda duos so-
lid.*

lid. & sex denar. In quorum omnium testimonium, sigillum commune prædictorum Prioris & Capituli, & sigilla Walteri de Northwode, Johannis de Isebergh, Johannis de Halifeld, Henrici de Mildenacre, Petri de Mildenacre, & Johannis de Prestwode, pro se & omnibus aliis Tenentibus de Gavellond, ad requisitionem ipsorum: & Johannis de Pettesfeld, Johannis de la Dene Capellani, Henrici de Lomere, Alfredi de Northwode, Henrici de Northwode, & Walteri Ive, pro se & omnibus aliis Tenentibus de Inland, ad requisitionem eorundem, huic scripto cirographato alternatim sunt appensa. Acta sunt hæc anno supradicto.

Breve Regis (*W^{mi} j^{mi}*) pro terris monasterii S. Augustini Cant. alienatis recuperandis.

Scriptura 13.
Vide pag. 68.

Will^{mus} Dei gratiâ Rex Angliæ, Lanfranco Archiepiscopo Cantuar. &c. Salutem. Mando & præcipio ut faciatis S. Augustinum & Abbatem Scotlandum reseisire burgum de Fordwich, quem tenet Haymo vicecomes, omnesque alias terras quas Abbas Egelfinus fugitivus, mentis lenitate, vel timore, vel cupiditate

piditate alicui dedit vel habere concessit. Et si aliquis, &c.

Charta *W.* Regis j^{mi} de restitutione ablatorum in Episcopatibus & Abbatiis totius *Angliæ*.

W. Dei gratiâ Rex Anglorum, L. Archiepiscopo Cantuar. & G. Episcopo Constantiarum, & R. Comiti de Ou, & R. filio Comitis Gil. & H. de monte forti, suisque aliis proceribus regni Angliæ, Salutem. Summonete Vicecomites meos ex meo præcepto, & ex parte mea eis dicite, ut reddant Episcopatibus meis, & Abbatiis totum Dominium, omnesque dominicas terras quas de Dominio Episcopatum meorum & Abbatiarum, Episcopi mei & Abbates eis vel lenitate, vel timore, vel cupiditate dederunt, vel habere consenserunt, vel ipsi violentiâ suâ inde abstraxerunt, & quod hætenus injustè possederunt de Dominio ecclesiarum mearum. Et nisi reddiderint, sicut eos ex parte mea summonebitis, vos ipsos velint nolint constringite reddere. Quod si quilibet alius, vel aliquis vestrum quibus hanc justitiam imposui, ejusdem querelæ fuerit, reddat similiter quod de Dominio Episcopatum

Scriptura 14.
Vide pag. 68.

• f. quàm.

vel Abbatiarum mearum habuit, ne propter illud quod inde aliquis vestrum habebit minus exerceat super meos Vicecomites, vel alios quicumque teneant dominium ecclesiarum mearum ^b *quod præcipio.*

Breve Regis in subsidium *Villanorum* Abbatis *S. Augustini Cantuar.* se gravari querentium in taxatione 10^{mæ} & 15^{mæ}.

Scriptura 15.
Vide pag. 73.

Edwardus *Dei gratiâ Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, Taxatoribus Decimæ & Quintædecimæ in Comitatu Cantia, Salutem.* Ex parte dilecti nobis in Christo Abbatis *S. Augustini Cantuar.* nobis est ostensum, quod vos omnia bona & catalla Villanorum ipsius Abbatis in Comitatu prædicto, non deductis redditibus, servitiis & custumis quæ iidem Villani præfato Abbati reddunt & solvunt annuatim, quæ quidem redditus, servitia & custumæ inter temporalia ipsius Abbatis spiritualibus suis annexa ad decimam sunt taxata, & inde idem Abbas decimam solvit, taxastis, & decimam & quintamdecimam prædictas inde levare intenditis ad opus nostrum, in ipsius Abbatis & Villanorum

Villanorum suorum prædictorum præjudicium & gravamen: Nos nolentes prædictum Abbatem, pro eo quod ipse de temporalibus spiritualibus suis annexis decimam solvit in hac parte indebitè prægravari, vobis mandamus, quod deductis redditibus, servitiis, & custumis Villanorum prædictorum, quæ inter temporalia prædicti Abbatis spiritualibus annexa ad decimam sic taxantur, & de quibus idem Abbas decimam solvit, sicut prædictum est, residua bona & catalla eorundem Villanorum taxari, & dictas decimam & quintam decimam inde ad opus nostrum levare faciatis, prout aliàs in hujusmodi taxationibus fieri consuevit. Et si quid per vos à præfatis Villanis indebitè levatum fuerit, id sine dilatione restitui faciatis eisdem. Teste meipso apud Pontefractum primo die Martii, anni regni nostri septimo.

Charta de Homagio facto pro terrâ de **Gavelkind**, sicut de Villenagio.

Sciant omnes tam posteri quam præsentem quod **W^{mus}** filius **W^{mi}** de **Elmton**, & **Radulfus** frater suus diviserunt hereditatem suam
de

Scriptura 16.
Vide pag. 73.

de duabus villis **Burne** & **Wilrintune**, sicut de **Gabelikende** in Curia S. Augustini, in præsentia Domini Rogeri electi ejusdem ecclesie & plurimorum Monachorum & Laicorum: & Radulfus relevavit in eadem Curia partem suam. Ipse verò Radulfus de medietate istarum duarum villarum fecit homagium Abbati sicut de Villenagio, & reddet de **Burne** gablum quinquaginta solid. quatuor terminis anni, dominicâ viz. *Palmar. xxij. s. vj. d.* in Nativitate S. Johannis tantundem, ad festum S. Michaelis tantundem, ad festum S. Thomæ ante Nativitatem Domini tantundem, & tantundem servitii quantum ad idem Villenagium pertinet, faciet. Similiter de medietate de **Wilrinton**, idem Radulfus alios quinquaginta solidos, eodem modo, & eisdem terminis reddet cum servitio. Ego autem R. Dei gratiâ electus beati Augustini Cantuariensis ejusdemque loci conventus, hanc partem sue hereditatis præsentî chartâ & sigillo ecclesie nostræ eidem Radulfo confirmavimus. Hiis testibus quorum nomina subscripta sunt, Will^{mo} filio Nigelli, Elya de **Silingheld**, Radulfo de S. Leodegario, Radulfo de **Crepe**, Eylgaro de **Esture**, Hugone Cofin,

Cosin, Stephano *de Kenardinton*, Alano *de Reading*, Daniele *de Wyvelesberhe*, Hamone *de Solforde*, Hamone *de Aldelose*, Alano *de Legh*, Rogero *de Wadenhale*, & *pluribus aliis*.

Chirographum pervetustum de Nuptiis contrahendis, & Dote constituendâ.

Here appeareth in this writing the agreement
 þen ƿutelaþ on þýran Ʒeppite þa Ʒoneƿanð
 that Godwine made with Byrhtic when he his
 þe Eodƿine ƿophte ƿið Byrhtic þa he hir
 daughter wooed, that is first that he gives her
 dohten aƿoƷode, þ̅ 1ƿ æƿeƿt þ̅ he Ʒæƿ hipe
 one pounds weight of gold ^aso as she his
 aneƿ punðer Ʒeƿihta Ʒolðer ƿið þonne þe heo hir
 agreement received, & he giveth her those lands
 ƿæce unðerƿenƷe, 7 he Ʒeuþe hipe þæƿ lanðer
 at Strete with all that thereto apperteineth, &
 æt ðƿræte mið eallan þon þe þærto heƿð, 7
 in Burwaremersh one hundred and fifty acres, &
 on Bupƿameƿƿce oðer healf hund æceƿa, 7
^bthereto thirty oxen, & twenty cowes, & ten
 þærto þƿittig oxna, 7 tƿentig cuna, 7 tyn
 horses, and ten bondmen. This was ^cspoken at
 honƿ, 7 tyn ðeopmen. Ðiƿ ƿæƿ Ʒeƿpecen æt
 Kingstone before Cnute king in Living
 cincƷertune beƿonan Cnute cincƷe on LýƿinƷer
 the Archbishops ^dwitnesse, and in the Covents at ^epresence.
 ancebiƿcoper Ʒeƿitneƿƿe, 7 on þæƿ hipeðer æt
 Christ-

Scriptura 17.
 Vide pag. 76.

^a Conditionally
 (and upon this
 consideration)
 that she accept of
 his speech, i. e.
 consent to the
 agreement, or
 contract here
 made, and on
 these terms
 will become
 his wife.
^b withall.

^c agreed.

^d presence.

Christ-church, and Ælfmeres (the) Abbats, and the
 cnihter cnihtan, ⁊ Ælfmeres abbot, ⁊ þær
 Covents at S. Augustine, and Æthelwines (the) She-
 hipeber æt S. Augustine, ⁊ Æþelpiner rīcege-
 riffe, and Siredes th'elder, and Godwines Wulfeyes
 neƿan, ⁊ Sipeber ealdan, ⁊ Lodbīner pulfeager
 sonne, and Ælsy child, and Eadmer at Burham, and
 runu, ⁊ Ælfrige cild, ⁊ Eadmer æt Burham, ⁊
 Godwine Wulfstanes sonne, and Charles the kings
 Lodbīne pulfrtaner runu, ⁊ Kan þær cnihter
 *knight, & when men that maiden fetchd to Bright-
 cniht, ⁊ þa man þ̅ mædan fette æt Bynht-
 ling, then went of all this ^fin pledge Ælfgar
 linƿan, þa eode þyres ealler on bōh Ælƿan
 Syredes sonne, and Frerth priest of Folstone &
 Sypeber runu, ⁊ Fnehtlī ppeort on folcƿtane ⁊
 of Dover Leofwine priest, and Wulfsy priest, &
 of Doƿeƿan Leofpīne ppeort, ⁊ Pulfrige ppeort, ⁊
 Eadred Eadelmes sonne, and Leofwine Wærelmes
 Eadnæd Eadelmer runu, ⁊ Leofpīne pæpelmē
 sonne, and Cenwold rust, and Leofwine Godwines
 runu, ⁊ Cenpōd purt, ⁊ Leofpīne Lodbīner
 sonne at Horton, and Leofwine the red, and
 runu æt Hoptune, ⁊ Leofpīne se neade, ⁊
 Godwine Eadgifes sonne, and Leofsun his brother.
 Lodbīne Eadgeofe runu, ⁊ Leofrunuhī bnoðer:
 And which soever of them longest liveth ^stake all
 ⁊ sƿa hƿæðer heopa læng libbe so to eallen
^hinheritances. ^hpossessions aswell that land that I to them give as
 ætan ge on ðam lande þe ic heom ƿæfgea
ⁱ of each, or every thing. This thing is knowne ⁱto all ^kvaliant
 every. ælcon þīnƿan. Ðýrra þīnƿar gecnæpe ælc dohtīg
^kdoughty. men in Kent, and in Suffex of Thanēs and of
 man on Kænƿ, ⁊ on Suþrexan on ðegenan ⁊ on
 Charles

Churles, and this writing is ¹three-fold, one is ¹ tripartite.
 ceoplan, 7 þýrra Ʒeppita Ʒýnb Ʒreo, an 1Ʒ
 at Christ-church, ^m another at S. Augustine, the ⁿ a second.
 æt cƷiƷter cýpcan, oðer æt S. Augurtime, þ
 third hath Byrhtic himself.
 þriððe hæfð Býrhtic Ʒelf.

*Testamentum Ethelstani Etheling, filii regis Ethel-
 redi, quo (inter alia) contulit Ecclesiæ Christi
 Cantuariæ, manerium de Holingburne, anno
 Christi 1015.*

In God Almightyes name I Ethelstan Prince
 On GodeƷ AlmiƷtiƷer name ic EþelƷtan Eþeling
 make knowne in this writing how I my substance
 ƷeƷpoteli on þýren Ʒeppite hu ic min aƷe
 & my possessions given have for Gods ⁿ love & ⁿ gl
 7 min eƷte Ʒepunnen habbe Gode to loue 7
 my soules redemption, and my father Ethel-
 minne Ʒaule to alyrednerre 7 mineƷ Ʒader Eþel-
 redes king that I it of ^o earned, that is first
 neðer KingeƷ þe ic hit et Ʒeepnode, þet 1Ʒ æneƷt
 that I consent that man ^p set free every forfeited
 þet ic Ʒan þe man ƷeƷpeý echne Ʒite
^q surety ^r that I by ^s promise ^t ought. And I give in
 verteman þe ic on Ʒpeche oƷhte. And ic Ʒan in
 with me where I me rest to Christ and S. Peter
 mið me þeƷ ic me neƷtý CƷiƷte 7 S. PetƷe
 those lands at Eadburghbery which I bought of
 þaƷ lonðer æt EadbunƷbery þe ic boƷte æt
 my father ^u with two hundred ^v marks of gold by
 min vader mið tuam hund mancure ƷoldeƷ be
 D d weight, ^u for.

^o obtained.
^p set at liberty.
^q pledge.
^r Fortè man-
 cipia. Vide Dic-
 tionar. nostr. in
 voce Ʒite-
 ðeop. Spelm.
 Glossar. verb.
 Domesticus, pag.
 222. col. 2.
 Item Concil. p.
 403. & Matt.
 Paris. Addi-
 tam. p. 243.
^s contract.
^t possesse.
^u for.

2 for.

2 for.

2 yeild.

* numbred.

weight, & * with five pounds of silver, & that land
 ȝepihȝe, 7 mið viȝ pund ȝelupȝ, 7 þeȝ land
 at Meralefan which I bought of my father 7 with
 æt Mepalefan þe ic boȝte at min vadeȝ mið
 two hundred marks and a halfe of gold by weight,
 þȝiððe healf hund mancȝen ȝoldeȝ by ȝepiȝte,
 and that land at Mordune which my father me to
 7 þeȝ land at Mordune þe my vadeȝ me to
 let I give into that place for our both foules,
 let ic ȝan into þane ȝtope von unkȝe beȝȝe ȝoule,
 & I him this pray for Gods love & for S. Ma-
 7 ic hine þaȝ biððe von Godeȝ luvȝ 7 von S. Ma-
 ry and for S. Peters that it stand mought, &
 ȝie 7 von S. Petȝeȝ þeȝ hiȝ ȝtanðen mote, 7
 that sword with silver hilt that Wolfriht
 þaȝ ȝpeȝdeȝ mið ȝelupene hilt þe polȝȝiht
 made, & that gilt pouch, & that bracelet which
 ȝȝoȝte, 7 þane ȝelden veteleȝ, 7 þane beȝȝ þe
 Wolfriht made, and that drink-horne that I ere
 polȝȝiht ȝȝoȝte, 7 þane ðpench horn þe ic eȝ
 of that Covent bought at Ealdminſter. And I
 at þan hiȝðe boȝte on Ealdmenȝȝe. And ic
 will that men take that money which Athelwolds
 ȝille þeȝ man nime þeȝ ȝȝe þe Athelpoldeȝ
 widow me ought to 2 pay which I for her ere
 laȝ me oȝȝ to ȝelðenne þe ic ȝon hine eȝ
 paid have, and diſpoſe it Elſȝ biſhop to
 ȝeȝhoȝen habbe, 7 biȝeȝe Elȝȝȝe biȝcope into
 Ealdminſter for my ſoule, that is twelve
 Ealdmenȝȝe von minȝe ȝoule, þeȝ ȝȝnð ȝȝelȝ
 pounds * by tale. And I give to Chriſt-church
 pund by tale. And ic ȝan into cȝiȝȝe cheȝiȝe
 in Canterbury thoſe lands at Holingbourne and
 on Cantȝapebeȝi þeȝ londeȝ æt Holingbunȝe 7
 thoſe

those which thereto appertaine, except that one þar þe þærto liht, buten þar ane plough-land that I to Siferth given have. And ſpolinge þe ic ſiþerþ ʒeunnen habbe. And thoſe lands at Garwaldintune, and I give thoſe þar lonðer æt Lappaldintune, ⁊ ic ʒan þar lands at Ritherfelde to the nuns minſter of Saint lanðer æt Riþerþfelde into nunnen menerþre reýnte Mary ^bgratis, and one ſilver great piece of five ^bfreely. Marie þanker, ⁊ enne ſelupene micle of viſ pounds, & to New-minſter one ſilver baſin punðen, ⁊ into Niepemenereþre enne ſelupene hþer of five pounds in that holy Trinities name that of viſ punðen on þare halʒe þrinneþre namen þe the place is dedicated to. And I give to Shaftes-rye ſtope iſ ſorholi. And ic ʒan to Deþterbury to that holy ^crood and to Saint Edward ^cCrucifix. berý to þare halʒe noðe ⁊ to reýnte Eoþarð thoſe vi. pounds which I to Edmund my brother þare vi. punðe þe ic Eoðunð mine bnoðer ^dcommitted have. And I give to my father Ethel- ^dmade known. ʒepiſſeð habbe. And ic ʒan mine vadeþ Eþelred King thoſe lands at Cealtune ^eexcept thoſe ^eſaving. neð Kinge þar lonðer at Cealtune buten þan eight hides which I to Aelmer my Miniſter eʒten hiden þe ic Aelmeþe mine Knigþe given have. And thoſe lands at Northtone, & ʒeunnen habbe. And þar lonðer at Noþtune, ⁊ thoſe lands at Mulinton, and thoſe ſilver hilted þar lonðer at Mulintune, ⁊ þar ſelupe hiltene ſwords which Wlkytel poſſeſſeth, & that brigandine ſþenðer þe þlkytel ahte ⁊ þare bþenien that with Morkere is, and thoſe horſes that Thurþe mið Monkeþe iſ, ⁊ þar hopþer þe þurþ-
D d 2 brand

^f tipped.

^g victual.

^h needy.

ⁱ possesse, i. e.
whoever owes
the land.
^k possesseth.

^l Crucifix.

brand me gave, and those white horses which Lief-
brand me gaf, ⁊ þar hpiſenhopper þe Lief-
wine me gave. And I give to Eadmund my bro-
þyne me gaf. And ic gan Eadmunðe mine bro-
ther those swords which Offa King enjoyed. And
ðer þar rperðer þe Offa King ohte. And
those swords with the hollow hilt, & one jave-
þar rperðer mið þam petted hilt, ⁊ one rpon-
lin, and one silver ^fhemmed war-trumpet, & that
ðer, ⁊ ane rluen hemmed bleð horn, ⁊ þane
land which I possesse in Eastangle. And those lands
land þe ic ahte on Ertangle. And þar lonðer
at Peakesdale. And I will that men deliver every
at Peacerðale. And ic wille þet man geletre eche
yeare one dayes ^gferme to the covent at Ely of this
gepeane ðeý rerne þan hipeðe into Ely of þire
land on S. Etheldriths masse-day and give likewise
ane on S. Eþelþriðe merre-ðeý ⁊ gerelle ðer
to the minster one hundred pence. and feed there
to menrþe an hundred ^hpoore. ⁊ gefete þer
on that day an hundred ^hpoore. Be ever this
on þanne ðeý an hund þearne. ry eue ry
almes delivered yearly, ⁱow the land he that
elmerre gelet geþpamliche, oge land re þe
^koweth, whilest Christendom standeth. And if he
oge þe hpile cristendom rtonðet. And gef þo
will not that almes performe who that land hath,
nellap þe elmerre geþonþi þe þet land habbeþ
go that land to S. Etheldrith. And I give
ganþ re ane into S. Eþelþriðe. And ic gan
to Eadrith my brother one silver hilted sword.
Eadnyþe mine breðer ane rluen hiltet rponð.
And I give to Elfsy bishop one gilt ^lcroffe which
And ic gan Elfrige byrcoppe ane gilt node þe
is.

is with Eadrith Syfleds son, and one black
 17 mid Eadriþe Sýfleðer sunu, 7 enne blacne
 stede. And I give to Elmer those lands at Hamel-
 rteðe. And ic ðan Elmene þar lonðer at Hamel-
 den which he^m ere had. And I pray my father ^m sometime,
 ðen þe he en ahte. And ic biððe mine vaden
 for God Almightyes love and for mine that he
 von Godeþ Almightyer luv 7 von minen þeþ he
 that ⁿ give which I to him given have. And I ⁿ confirm;
 þar geunnen þe ic him geunnen habbe. And ic
 give to Godwine Wlnothes sonne those lands at Cu-
 ðan Goðpine pulnoþer sunu þar lonðer at Cu-
 nitune which his father ^o ere possessed. And I give ^o sometime;
 nitune þe his fader en ahte. And ic ðan
 to Elfsith my ^p foster-mother for her great ^p nurse;
 Elfrife minne forþer-moðer for hire muchele
 deserving those lands at Westune which I bought of
 geapnunge þar lonðer at þertune þe ic bohte at
 my father^q with three hundred marks lacking a half ^q for;
 mine vaden mid þriððe halfe hund mancuren
 of gold by weight. And I give to Elfwine my
 golðer be geþigte. And ic ðan Elfpine mine
 masse-priest those lands at Horelvestune & those
 merre-pneort þar lonðer at hopeluerstune 7 þar
 swords which Wyther enjoyed. And my horse
 rpenðer þe pyþen ahte. And mine hopper
 with my furniture. And I give to Eylmere my
 mid mine genode. And ic ðan Eylmene mine
 dishe thane those eight hides at Cateringetune, & ^q Sewer, forte;
 ðishe þeyne þane ehte hide at Cateringetune, 7
 one diverse-coloured stede & those sharp ^f swords ^f Fortè, a Cut;
 ane vohne rteðe 7 þar rhanðede rponðer ^{lash.}
 & my target. And I give to Syferth those lands
 7 mine tarðe. And ic ðan Sýferþ þar lonðer
 at

at High-cliffe and one sword and one horse &
 at hoggenclýue ⁊ anes rporðer ⁊ anes honrer ⁊
 my bowed shield. And I give to Ethelferth
 mine boðeðe rcelðer. And ic ðan Eþelþenþe
 Stameren and Lyving those lands at Tywyng.
 Stameþen ⁊ Lývynge þar lonðer at Týpýnge.
 And I give to Liefstane Liefwines brother what of
 And ic ðan Liefstane Liefpiner broðer quatter
 that land-estate which I of his brother took. And
 þare land-are ðe ic of his broðer nam. And
 I give to Lyemare at Bygrove those lands which I
 ic ðan Lyemare at Bygroue þar lonðer ðe ic
 him were from took. And I give to Godwine
 him ene of nam. And ic ðan Godpine
 Drevelen those three hides of land at Little Gare-
 Dreuelen þare þriare hide at Little Lape-
 shale. And I give to Edrith Wynfelds sonne that
 shale. And ic ðan Eorþ þýnfeldes runu þar
 sword * which the hand is on marked. And I
 rporðer þe ri hand is an gemarced. And ic
 give to Elfwine my minister that sword which he
 ðan Elfwine mine cnigte þar rporðer þe he
 to me sometime gave. And I give to Elfnoth my
 me en rýalde. And ic ðan Elfnode mine
 sword white, & to my Huntsman that stede which
 rporðe hrizen, ⁊ mine Diephunte þar rtoðer þe
 is at Colingeregge. And tender men of my gold
 is at Colingeregge. And healde men of mine gold
 to Elurith at Berton & to Godwine Drevelen so
 Eluride at Bertune ⁊ Godpine Dreuelen rpo
 much as Eadmund my brother knowes that I
 michel rpo Eadmund my broðer poð þat ic
 to them of right to yeild ought. Now thank I
 heom mid rihte gelðen oðe. Nu þonky ic
 my

from.

* sometime.

* is marked
with a hand.* sometime
fold.

my father with all humility in God Almightie
mine vader mid alre edmodnerre on Lode Almighties
name for that answer which (he) to me sent
tief name þare answere þe me sende
on Friday after midsummers masse-day by Elf-
on fridrefter midsumere merre-dage by Elfgare
Elfstanes son, which was that he to me signified
gare Elfrtane rune, þet þar þet he me kide
by ^a my fathers message that I might by Gods ^a a message
a minefader þorðe þ ic mozt by Loder from my fa-
permission and by his give my lands and my ther.
geliae 7 by his unnen mine ape 7 min
^a possessions as to me most expedient seemed, ^b ei- ^a substance.
egte rpo me merz þeð þugete, ai- ^b i. e. Either to
ther for God and for the world. And of this an- divine or secular
ðer þon Lode 7 þon þorðle. And þisre and- uses.
swer is to witnesse Eadmund my brother and
rper is þon gepitnerre Eadmund my broðer 7
Elfsy bishop, and Byrhtmer Abbat and Eilmer
Elfrige byrcope, 7 Byrhtmer Abot 7 Eilmer
Eluriches sonne. Now pray I all the wise men
Eluricher rune. Nu biððe ic alle þe rýten
which my ^c will shall hear read either ^d Clergie ^c testament.
þe mine quýðe gehipeð neðe eyðer gehodeð ^d Clerks.
& ^e Laity, that they be of assistance that my ^f will ^e Laics.
7 lepeð, þet hi ben on vultume þet my cpýðe ^f testament.
stand may, sith my father giveth leave for
rtonðen mote riþe minefader gelianu on
my ^g wills standing. Now declare I that all those ^g testaments.
mine quýðe rzent. Nu kýþe ic þet alle þo
things which I to God unto Gods church and
þinȝ þe ic to Lode into Loder cepechen 7
Gods servants given have be don for my
Loder þeuen geunnen hadde rý geðon vor minefader
decr

[estates.

[testament.

deer fathers soule Ethelred King and for mine & lieuer fader saule Eþelred Kynzer 7 for mine 7 Elfrith my grand-mother that me fedd, and for Eþþiðe mine ealde-moðer þe me vedde, 7 for all theirs that me to this^h goods helped. And he alþe þape þe me to þire ȝoden ȝeþylrten. And þe that thisⁱ will through any thing breaketh let þe þirne quýðe þurȝ enȝ þinȝ apende habbe him give an accompt thereof to God Almighty, and him ȝiþ God Almiȝti ȝemene, 7 to Saint Mary, and to Saint Peter, and to all ȝiþ reýnte Marie, 7 ȝiþ reýnte Peter, 7 ȝiþ alle those which Gods name do laud. þo þe Lober name he ȝieþ.

Charta Libertatum Ecclesiæ Christi *Cantuar.*
concessar. per Regem *Henricum* primum.

Scriptura 19.
Vide pag. 123.

H. *Dei gratiâ* Rex Anglorum, *Episcopis,*
Comitibus, Proceribus, Vicecomitibus, cete-
risque suis fidelibus Francis & Anglis in omni-
bus Comitatus in quibus Archiepiscopus Ra-
dulfus & monachi ecclesiæ Christi Cantuariæ
terras habent amicabiliter Salutem. Notum
vobis facio me concessisse eis omnes terras quas
tempore Regis Eadwardi cognati mei, & tem-
pore Willielmi patris mei habuerunt & Sa-
ca & Socne on Strande & Streame,
on Wode & Felde, Tolnes &
Teames,

Teames, & Githbreces, & Ham-
locne, & Forestealles, & Infan-
genes thioves, & Flemen feornithe
*super suos homines infra burgos & extra in
tantum & tam pleniter sicut proprii ministri
mei exquirere debent. Et etiam super tot
Thegenes quot eis concessit pater meus. Et*
*nolo ut aliquis hominum se intromittat nisi ipsi
& ministri eorum, quibus ipsi committere
voluerint, nec Francus nec Anglus: propterea
quia ego concessi Christo has consuetudines pro
redemptione animæ meæ, sicut Rex Eadwar-
dus & pater meus antehac fecerunt. Et nolo
pati ut aliquis eas infringat, si non vult per-
dere amicitiam meam Deus vos custodiat.*

Thus Englished in the same Charter.

h. þurh godeſ geu ænglelander cininſ gnete
ealle mine biſcoper ⁊ mine eopleſ ⁊ ſcipe geueuan
⁊ ðegenar ſpænciſce ⁊ ængliſc on ðam ſcipan þe
Raulf ærceb. ⁊ þe hýned æt criſterſcipcean on
Canſpæneberuſ habbaþ land inne ſpæondlice. ⁊
ic kyðe eop þ ic hæbbe heom geunnon þ hi bý on
ælce þape lande purþe þe hi hæfdon on Eoþarðer
Kinſer dæge mineſ mæſer. ⁊ on þillelmeſ Kynſer
dæge mineſ fæder. ⁊ ſaca. ⁊ ſocnæ. on ſtpande
⁊ on ſtpeame. on pudan. ⁊ on ſeldan. tolneſ ⁊
teamer. gniðbreceſ ⁊ hamſocne. ſorſtealler. ⁊
E c inſanſener

[] This answers not to the Latine; that, *quot eis concessis pater meus*; this, as I to them have granted.

inƿanƿener þiouer. ⁊ flæmen feorpmðe ofer hipe aƿen mæn binnan buƿƿan ⁊ butan. ƿƿa full ⁊ ƿƿa forþ ƿƿa mine aƿene ƿicneƿer hitƿecan ƿcolðan. ⁊ ouer ƿƿa ƿela ðeƿenar [ƿƿa ic heom to ƿeleten hebbe] ⁊ ic nelle þ æniƿ man æniƿ ðinƿ þær on tƿobuton hi. ⁊ heore ƿicnæƿer þe hi hit betæcon ƿillaþ ne ƿrænciƿce ne ænƿliƿce. forþan þinƿan þe ic hæbbe criƿte þar ƿerihƿte forƿeuen minƿe ƿaple to alƿƿeðneƿre ealƿƿa Eaðƿarð Kynƿ ⁊ min ƿæðer ær hæƿdon. ⁊ ic nelle ƿeðauian þ æniƿ man þiƿ to bƿece be minan fullan ƿƿeondƿƿiƿe. God eop ƿehealde.

Charta consimilium libertatum Ecclesiæ S. Augustini Cantuar. concessarum per S. Edwardum Regem.

Scriptura 20.
Vide pag. 123.

Ego Edwardus Dei gratiâ Rex Anglorum, Eadfino Archiepiscopo, & Godwino Comiti, & omnibus suis Baronibus Cancia, Salutem. Sciatis me dedisse Deo & S. Augustino & fratribus ut habeant eorum Saca & Socna, & pacis fracturam, & pugnam in domo factam, & viæ assaltus, & latrones in terra sua captos, latronumque susceptionem vel pastionem, super illorum proprios homines infra Civitatem & extra, theloniumque suum in terra & in aqua, atque consuetudinem quæ dicitur Teames. Et super omnes Allodiariorios

Allodiariorios.

arios suos quos eis habeo datos. Nec volo consentire ut aliquis in aliqua re de his se intromittat, nisi eorum præpositi quibus ipsi hoc commendaverint, quia habeo has consuetudines Deo datas & S. Augustino pro redemptione animæ meæ ita pleniter & liberè sicut melius habuerunt tempore prædecessoris mei Knuti Regis, & nolo consentire ut aliquis hæc infringat, sicut meam amicitiam vult habere.

Epistola Gaufridi Supprioris & Monachor. Ecclesiæ Cantuariensis ad Regem Henricum 2. de lite inter eos & Baldwinum Archiepisc.

Excellentissimo Domino suo H. Dei gratiâ Anglorum Regi G. Supprior & Conventus ecclesiæ Christi Cantuar. flebilis & ultra modum afflictus Salutem & suspiria flentium & afflictorum respicere. Cum scriptum sit, Gloria in excelsis Deo, & in terra pax hominibus bonæ voluntatis: ut pro bona voluntate in terris habita, gloriam habeatis in cælis, Serenitati vestræ quem in nullo offendisse credimus vel recognoscimus, supplicamus, ut

Scriptura 21.
Vide pag. 67.
& 101.

[] This answers not to the Latine; that, *quot eis concessis pater meus*; this, as I to them have granted.

inƿanƿener þiouer. ⁊ flæmen feorpmðe ofer hine aƿen mæn binnan buƿƿan ⁊ butan. ƿƿa full ⁊ ƿƿa forþ ƿƿa mine aƿene ƿicneƿer hitrecan ƿcolban. ⁊ ouer ƿƿa ƿela ðegenar [ƿƿa ic heom to ƿeleten hebbe] ⁊ ic nelle þ æniƿ man æniƿ ðinƿ þær on tƿobuton hi. ⁊ heore ƿicnæƿer þe hi hit betæcon ƿillaþ ne ƿræncƿce ne ænƿliƿce. forþan þinƿan þe ic hæbbe criƿte þar ƿerihƿe forƿeuen minre ƿaple to alyredneƿre ealƿƿa Eadƿarð Kynƿ ⁊ min ƿæðer ær hæƿdon. ⁊ ic nelle ƿeðauian þ æniƿ man þiƿ to bƿece be minan fullan ƿneonðƿce. God eop ƿehealde.

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Allodiarum.

arios suos quos eis habeo datos. Nec volo consentire ut aliquis in aliqua re de his se intromittat, nisi eorum præpositi quibus ipsi hoc commendaverint, quia habeo has consuetudines Deo datas & S. Augustino pro redemptione animæ meæ ita pleniter & liberè sicut meliùs habuerunt tempore prædecessoris mei Knuti Regis, & nolo consentire ut aliquis hæc infringat, sicut meam amicitiam vult habere.

Epistola Gaufridi Supprioris & Monachor. Ecclesiæ Cantuariensis ad Regem Henricum 2. de lite inter eos & Baldwinum Archiepisc.

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Scriptura 21.
Vide pag. 67i
& 101.

Ecclesiæ Can-
tuarie dig-
nitas.

Nota.

*si quid odii aut rancoris concepistis adversus nos aut ecclesiam Cantuar. odio personæ aliqujus aut operis præsentis temporis vel præteriti, quod nos debeat respicere, pietatis intuitu remittatis, attendentes innocentiam nostram, nec vindicantes aliorum peccata in nobis. Si peccavimus publicè, puniamur, sin autem, quòd ecclesia Cant. de quâ omnes Anglorum Reges, non solum fidem Christi, sed & coronam Regni sumpserunt, quæ usque modò libera extitit, captivatur & conculcatur ab hominibus, cum sit mater omnium in regno Angliæ manentium. In Christo Jesu vobis dicimus, timemur ne novitates multæ & malæ subito oriantur, quarum principia etsi nos sensimus, forsitan exitus alios quàm nos tanget nec transire permittet immunes, sed involvet. Qui hanc novitatem non admiretur, quod Dominus Archiepiscopus dicit nos debere de eo terras & possessiones nostras tenere? cum jam per quingentos annos & eo ampliùs, à tempore scil. magni Theodori, qui terras partitus est, & utrique parti suam portionem assignavit, Conventus in pace possederit portionem suam, & liberè administraverit, quod & chartæ Regum & Pontificum plenius attestantur, ex
quarum*

quarum tenore perspicuum videre est, quod
 usque ad hæc infœlicitatis tempora, Archi-
 episcopus nihil juris vel dominationis plus ha-
 bebat in terris Monachorum, quàm Monachi
 in terrâ Archiepiscopi. Et ne super hoc quis-
 quam dubitet, proferantur in medium charta
 S. Edwardi Regis & Sancti Anselmi Archi-
 episcopi, & aliæ multæ Regum & Pontifi-
 cum. Quod autem dicitur Lanfrancum di-
 vidisse terras, ideo est, quod cum Normanni,
 captâ Angliâ, omnium ecclesiarum terras oc-
 cupassent, Rex Will. ad instantiam Lan-
 franci, eas resignavit. Lanfrancum verò sin-
 gulis ecclesiis reddidit quod antea possederant,
 sibi autem quod antecessorum fuerat suorum
 retinuit. Quod autem tempore Lanfranci non
 sit facta terræ divisio, testantur chirographia
 ante tempora beati Dunstani facta inter Ar-
 chiepiscopos & Monachos de concambiis ter-
 rarum multarum: sed & hoc attestantur scrip-
 ta vetustissima quæ linguâ Anglorum, **Land-** Landbokes.
bokes, id est, terrarum libros, vocant. Quia
 vero non erant adhuc tempore Regis Willielmi
 milites in Anglia, sed Threnges, præcepit Threnges.
 Rex, ut de eis milites fierent ad terram de-
 fendendam. Fecit autem Lanfrancus Threngos
 suos

Nota.

suos milites: Monachi verò non fecerunt, sed de portione sua ducentas libratas terræ dederunt Archiepiscopo, ut per milites suos terras eorum defenderet, & ut omnia negotia eorum apud Curiam Romanam suis expensis expediret. Unde adhuc in totâ terrâ Monachorum nullus miles est, sed in terrâ Archiepiscopi. Terram tamen ducentarum librarum adhuc habent Archiepiscopi: pro quibus omnibus valdè miramur, quòd vel talia dicit, vel quòd assensum ei præbetis, quòd vestrâ authoritate & nomine vestro, per ministros vestros res & possessiones nostras invadit, cum nichil ad eum spectent, set nos teneamus post Deum in capite de vobis, sicut & ipse: quod manifestum est, decedentibus Archiepiscopis, quia terræ eorum statim confiscantur, à seculo autem inauditum est, quod possessiones nostræ confiscatæ fuerint aliquo tempore. Quapropter supplicamus, ut maturiùs pro Deo dum potestis hæc corrigi faciatis, cum fortè tunc^a velitis, cum non^b poteritis. Valeat.

^a Fortè voleteis.
^b poteritis.

Donatio

Donatio Wolgithæ de manerio de Stisted,
A. D. 1046.

Here appeareth in this writing how Wolgith
 hyen spotelet on hyen gepite hu polgith
 gives her substance after her departure, which
 gan hipe ðing eften hipe vorþe, þe
 to her the Almighty God gave in life to use,
 hipe se Almiȝti Eob guþe on lue to brucene,
 that is then first to my Lord his right He-
 þet is þanne eper mine Lhouenþe hyr riȝte he-
 riot. And I give that land at Stistede ^a by Gods ^b with.
 riȝt. And ic gan þet land at Stistede a Lober
^b witnesse & my friends to Christ-church to ^c testimony
 gepitnerre 7 mine vpenben into Chriȝter-chepeche
 the Monks for sustenance, on this condition that ^d i. e. ad vic-
 þa Munecen to vorþe, on þanne gepede þet ^e tum.
 Elfkitel and Kytel my children use those lands
 Elfkizel 7 Kytel mine beapne bruce þar lonþer
 for their ^f dayes, and afterward go that land to ^g lives time.
 hyne beȝ, 7 riþþen ganȝ þat land into
 Christ-church without any deduction for my
 Chriȝter-chepech buten eccheþe amentale vor mine
 soule, and for Elfwines my Lords, and for all
 raule, 7 vor Elfpiner mine Lhouenþer, 7 uon alpe
 my children & be halfe the men free after their
 mine bieþne 7 by hialue þe men vrye eften hipe
^h dayes. And I give to the church at Stistede ⁱ deaths.
 þaȝe. And ic gan into þape chepeche at Stistede
^j besides that which I in life gave Eldemesland & ^k together with
 to þan þe ic on lue guþe Elbemerland 7 ^l that.
 thereto

Scriptura 22.
Vide pag. 85.

^a with.

^b testimony

^d i. e. ad vic-
tum.

^g lives time.

ⁱ deaths.

^k together with
that.

withall.

champion.

Crucifix.

will.

⁊ thereto Hyeken, that there be in all fifty acres
 þerto Hyeken, þet þer ry aller vifty ekeþer
 in^hfield after my departure. And I give to Wolk
 on veld eften mine vorþþe. And ic ȝan to polk
 & Kytel my sonnes that land at Walsingham, &
 ⁊ Kytelminen runer þet land at þalringeham, ⁊
 at Charlton, & Herlingham. And I give to my
 at Kapltune, ⁊ þeþlingham. And ic ȝan minen
 two daughters Gode and Bote Sexlingham and
 ȝam doȝteþen Gode ⁊ Bote Sexlingeham ⁊
 Summerledeton, and to the church at Sumerl.
 Sumeþledetune, ⁊ into þane chepeche at Sumeþl.
 fixtene acres of land, and one acre of medow.
 rixtene ekeþer lonþer, ⁊ enne ekeþer meþ.
 And I give to Ealgyth my daughter that land at
 And ic ȝan Ealgyþe mine doȝteþer þet land at
 Cherteker and at Ashford, and the wood which
 Cheþtekeþe ⁊ at Eþreþerþorþ, ⁊ þane poþe þe
 I laid thereto. And I give to Godwine Earle and
 ic leyþe þerto. And ic ȝan Eoþpine Eoþle ⁊
 Harald Earle Frithton. And I give to Christ-
 þapalþ Eoþle Fþiþtune. And ic ȝan into Chþiþter-
 church to Christs altar one little gilt
 chepeche to Cþiþter þeueþ ane litlene ȝelþene
 ⁊ croffe and one carpet, and I give to S. Edmund
 poþe ⁊ ane reþþaȝel, ⁊ ic ȝan S. Eþmunþ
 two boned hornes. And I give to S. Ethel-
 ȝeþen ȝeboneþ hopner. And ic ȝan S. Eþle-
 drith one wollen kyrtel. And I give to S. Oþyþ
 þriþe ane þllene kyntel. And ic ȝan S. Oryþe
 halfe a pound of money. And I give to S. Auþtine
 halþ punþ ȝeer. And ic ȝan S. Auþtine
 one carpet. And he that my^kteftament be-
 ane reþþaȝel. And þe þe mine quyþe be-
 reaveth

reaveth which I now ¹ordeined have ^mby Gods ¹ bequeathed.
ⁿ testimony, becaued let him be of these earthly ^m with.
ⁿ witnesse.
 ȝepitnerre, beŷaues he poŷe þiŷer epðliceŷ
 joyes, and cut off him the Almighty Lord
 menȝþer, 7 aŷhipeȝi hine ȝe Almiȝti Dniȝten
 which all creatures created and made from all
 þe alle ȝheppe ȝerhop 7 ȝepnoȝte vnam alpe
 ° holy mens communion ^p in Domeŷday, and be he ° Saints.
 haleȝene ȝemennerre on Domeŷday, 7 ȝy he ^p at.
 delivered to Satan the Devill and all his curŷed
 betaȝte Saŷane þane ðieŷle 7 alle hiŷ apanȝede
 companions into hell bottome, and there ^q be tortured.
 ȝeŷepen into helle ȝrunde, 7 þen acquelm
 with Gods ^r deniers ^f without intermiŷŷion, and mine ^r reprobates.
 mið Godeŷ piŷracen buŷe ȝerpyke, 7 mine ^r Or, Except he
 heires never to trouble^f. Of this is for wit- ^f deŷiŷt from mo-
 inŷenumen neuere ne aȝuenche. ðiŷŷer iŷ to ȝer- ^f leŷŷing mine
 neŷŷe Edward King and many others. ^f heires.
 piŷnerre Eoŷaŷd King 7 manie oþre.

*Donatio terrarum apud Apoldre, Orpinton,
 Palŷtre, Werborne, Wittriŷham, eccleŷiæ
 Chriŷti Cantuariæ per Ædŷum Preŷbyte-
 rum, de conŷenŷu Cnuti Regis & Ælŷgiŷæ
 Reginae, ann. 1032.*

Here appeareth ^r in this writing how Cnute King ^{Scriptura 23.}
 þen ȝputelaþ on þyran ȝepnite hu Cnut cȝnȝ ^{Vide pag. 120.}
 and Ælŷgiŷe hiŷ Lady gave to Eadŷy theiŷ ^r by.
 7 Ælŷȝiŷu ȝeo hlæŷðige ȝeupan Eaðȝige heoŷa
 F f Priest

Priest when he turned monk that he might
 p^{re}o^rt ða he ȝec^yp^ode to munece þ̅ he mo^rte
 f^r dispose. convey that land at Apuldore as to himse^{lf}e most
 a^rteon þ̅ landæt Apolone ȝpa him ȝyl^lan leo-
 pleasing were. Then gave he it to Christ-
 ȝa^rt pæne. þa ȝealde he hi^t into C^{ri}st^{er}-
 church to Gods servants for his soule, and he it
 c^ypⁱcan þ̅ Eode^r ðeopum ȝop hi^r ȝaple, ȝ he hi^t
 bought that of the Covent for his dayes and Æd-
 ȝebohte þ̅ æt þam hi^reðe hi^r ðæȝ ȝ Æd-
 wines with fower pounds, on that t^r contract that
 pⁱner mið ȝeopen punðan, on þ̅ ȝopp^yð þ̅
 men deliver every year to Christ-church three
 man ȝelv^rte ælce ȝeape into C^{ri}st^{er}-cⁱpⁱcan .111.
 eados. weighs of cheese from that land, and three "bun-
 pæȝa c^yȝer of þam lande, ȝ þ^{ne}o ȝe-
 dles of Eeles, & after his dayes & Ædwines go
 bind æler ȝ æ^rten hi^r ðæȝ ȝ Æðpⁱner ȝange
 that land into Christ-church, with meat & with
 þ̅ lande into C^{ri}st^{er}-cⁱpⁱcan, mið mete ȝ mið
 * i. e. entirely. * men even as it then v^rinriched is, for Eadsies
 ȝ improved. mannan eal ȝpa hi^t þænne ȝeȝoðoð ȝȝ, ȝop Eað^riȝer
 soule, & he bought that land at Werhorne of the
 ȝaple, ȝ he ȝebohte þ̅ landæt ȝephopnan æt þam
 Covent for his dayes and Eadwines also with fower
 hi^reðe hi^r ðæȝe ȝ Eaðpⁱner eac mið ȝeopen
 pounds, then goeth that land forth with the o-
 punðan, ðænne ȝaþ þ̅ land ȝopð mið þam o-
 ther after his dayes and Edwines to Christ-
 þ^{an} æ^rten hi^r ðæȝe ȝ Eðpⁱner into C^{ri}st^{er}-
 church with the z^r crop that there then on is, and
 cⁱpⁱcan mið ðæne tilþe þe þan þænne on ȝi, ȝ
 that land for his dayes at Berwick which he obtain-
 þ̅ land on hi^r ðæȝ æt Be^rpⁱcan ðe he ȝeeap-
 ed

ed of his Lord Cnute king, and he gives also
 noðe æt hys hlaforð Cnute cýnge, ⁊ he geunn eac
 those lands at Orpington in his dayes for
 þær lander æt Oppedingtune on hys dæge for
 his soule to Christ-church to Gods ser-
 hys ræle into Cýrter-cýpican ðam Eoder ðeo-
 vants for ^agarment land, which he bought with ^a clothing:
 pum to rcpud land, ðe he gebohte mid ^a Scrud-land:
 eighty marks of white silver by Hufstings ^a Hufstings
 hundeahrtigan mancan hýrter seolþer be hýrtinzer
 weight, and he gives also those lands at Palstre & ^a weight.
 gepiht, ⁊ he geun eac ðær lander æt Palstne ⁊
 at Wittresham after his dayes and Edwines
 æt pihtricerhamme æfter hys dæge ⁊ Eopiner
 forth with the other to Gods servants for fos- ^a Foster-land.
 forð mid ðam oþrum ðam Eoder ðeorum to for-
 ter-land for his soule. This bequest he giveth
 to the Covent on this ^b contract that they ever him ^b condition.
 ðam hýrde to þam forpýrðan þ hý æfre hýne
 well observe, and to him faithfull be in life and af-
 pell healðan, ⁊ him holde beon on lîfe ⁊ af-
 ter life, and if they ^c with any unadvisednesse ^c by:
 ter lîfe, ⁊ gif hý mid ænegan unpeðe
 with him this ^d contract shall breake, then stands ^d condition.
 pîð hýne ðar forpýrð to brecan, þænne rtanðe
 it in his owne power how he afterwards his
 hit on hys azenan gepealde hu he rþþan hys
 owne dispose will. Of this is for witnesse Cnute
 azen ateon pille. Dýser is to gepitnerre Cnut
 King, and Ælfgife his Lady, & Æthelnoth Archb.
 cýng, ⁊ Ælfgrýu seohlaðige, ⁊ Æðelnoð Arceb.
 & Ælfstan Abb. and the Covent at S. Austines, and
 ⁊ Ælfstan Abb. ⁊ se hýrde æt S. Augurtime, ⁊
 Ff 2 Brihtric

tripartite.

to.

Brihtric young and Ætheric husbandman, and
 Bp̃ihtric ȝeounȝa ȝ Æþelpic biȝenȝa ȝ
 Thorth Thurkilles nephew, and Tofi, and Ælfwine
 þopð þupkiller neȝa, ȝ Toȝi, ȝ Ælȝpine
 priest, and Eadwold priest, and all the Kings
 p̃neorȝ ȝ Eadpolo p̃neorȝ, ȝ ealle ðær cȝnȝer
 Counsellours, and this writing is ˆthreefold, one
 p̃æðer men, ȝ þ̃iȝra ȝepp̃ita ȝȝnða .111. an
 is at Christ-church, and one at S. Augustines, &
 ȝ æt C̃p̃iȝter-cȝp̃ican, ȝ an æt S. Auguȝtine, ȝ
 one hath Eadſy ˆwith himſelfe.
 an hæȝð Eadȝiȝe mið him ȝȝlȝan.

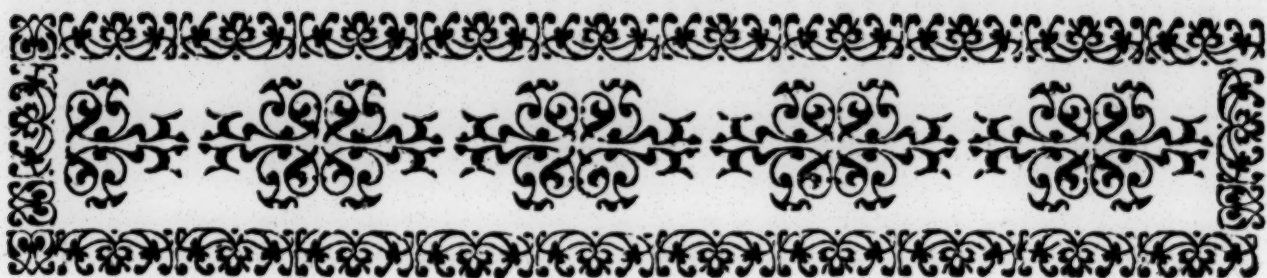
FINIS.



I HAVE perused this learned Treatise of
GAVELKYND, and judge it very
 fit to be Published.

April 7. 1647.

Ja. Armachanus.



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